No. 155

No. 5168

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United States Court of Appeals for the First Circuit.

No. 5168.

WHIT MASON,
PLAINTIFF, APPELLANT,

v.

THE AMERICAN EMERY WHEEL WORKS,
DEFENDANT, APPELLEE.

RECORD APPENDIX TO BRIEF FOR APPELLEE.

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RECORD APPENDIX.

In the District Court of the United States for the District of Rhode Island.

WHIT MASON
v.
THE AMERICAN EMERY WHEEL WORKS
C. A. No. 1804

Excerpts from Testimony before Judge Day.

[2] FREDERICK N. LYMAN, SWORN

Direct examination by Mr. Durkin.

1 Q. Mr. Lyman, will you tell us, please, by whom you are employed? A. Millers Falls Company, Greenfield, Mass.

2 Q. Can you tell us whether or not your company manufactures bench grinders? A. No, we do not.

3 Q. Can you tell us whether or not your company, in effect, purchases any bench grinders? A. Yes, we do.

4 Q. From whom do you purchase these bench grinders?

Mr. REYNOLDS. I don't want to be technical but I would object until the capacity in which Mr. Lyman is employed by Millers Falls is established. I presume he is probably an executive of high order but I think we ought to have something to presume he would know this information he is giving us.

5 Q. You are what— [3] A. I am the sales manager in charge of the Industrial Division.

6 Q. In that Industrial Division, does that include these bench grinders? A. Yes, it does.

7 Q. You say you purchase these bench grinders, sir? A. Yes, we do.

8 Q. Can you tell us from whom you purchase them? A. We purchase them from the Kingston Conley Division of Hoover Company.

9 Q. Do you purchase them from anyone else? A. No, we do not.

10 Q. Is there any name plate on these machines identifying your particular company? A. As they come in to us?

11 Q. First of all, is there? A. Yes, there is.

12 Q. Do you put that name plate on? A. No, we do not.

13 Q. Who puts it on?

Mr. REYNOLDS. If he knows of his own personal knowledge, your Honor. If he doesn't, I think he should say so.

The COURT. That is understood.

[4] 14 Q. You say you don't put them on? A. No, we do not.

15 Q. Do you send the name plates to anyone to be put on? A. Yes.

16 Q. To whom do you send them? A. To the Kingston Conley Division of Hoover Company.

17 Q. When these machines are received by you from the Hoover Company, can you tell us whether or not anything is done to those machines while they are at your premise? A. No, they are merely stored.

18 Q. For what purpose, sir? A. For future sale by Millers Falls Company.

19 Q. When you get orders for those machines, you ship them out? A. That is correct.

Mr. DURKIN. I think that is all, sir. Thank you.

Cross-examination by Mr. Reynolds.

20 XQ. Mr. Lyman, how long have you been employed by the Millers Falls Company as a sales manager? A. As a sales manager, for about 18 months.

21 XQ. About 18 months? A. Yes.

22 XQ. You were not the sales manager in the year 1952 or '53? A. No.

23 XQ. Do you know who was, of your own personal knowledge? [5] A. There was no one in that capacity at that time.

24 XQ. You are speaking of the practice with regard to the past 18 months when you have been sales manager? A. Yes, but I have been with the firm for 18 years and have worked in the office at previous times and feel that I am familiar with the practice.

25 XQ. And you were subpoenaed to come here today, I take it? A. Yes, I was.

26 XQ. You were subpoenaed? A. Yes.

27 XQ. How far is it from here to Greenfield? A. Approximately 100 miles.

28 XQ. And you handle more than one type of grinder?

Mr. DURKIN. Excuse me, sir. I think the subject is a bench grinder.

Mr. REYNOLDS. This is cross-examination, your Honor.

Mr. DURKIN. I would think it would be immaterial then, sir.

The COURT. What is that?

Mr. DURKIN. I would think it would be immaterial if we went into any other type grinder other than a bench grinder.

The COURT. I will allow reasonable latitude. Go [6] ahead, Mr. Reynolds.

29 XQ. Do you people sell other than the so-called bench grinders? A. Yes, we do.

30 XQ. Generally speaking, you sell quite an assorted number of grinders of one kind or another, don't you? A. We manufacture two different types.

31 XQ. Some you manufacture yourselves? A. Oh, yes; oh, yes. In fact, all other than the bench grinders.

32 XQ. You manufacture your own grinders except the bench grinders? A. Yes.

33 XQ. Did you manufacture your own grinders in 1952 to your personal knowledge, Mr. Lyman? A. Yes.

34 XQ. And did your company manufacture so-called bench grinders in 1952 to your knowledge? A. No, we did not.

35 XQ. Is it your understanding that you had the Hoover Company make a bench grinding machine? Now we are speaking as of 1952. A. Yes.

36 XQ. You say you do have some knowledge of it? A. Yes.

37 XQ. In what capacity, Mr. Lyman, would you come to that [7] knowledge in 1952? What would be your job? A. Well, at that time I was the district sales manager for the firm.

38 XQ. District sales manager? A. Yes.

39 XQ. What would that district embody? A. That district embodied headquartering in Texas and covering several states in the southwest area.

40 XQ. Did it cover Mississippi? A. No, it did not.

41 XQ. Was there some other district manager covering Mississippi? A. Yes, there was.

42 XQ. What was his name? A. His name was Harry Creller of Atlanta, Georgia.

43 XQ. How do you spell his name? A. C-r-e-l-l-e-r.

44 XQ. To your personal knowledge is he living or dead? A. He is living.

45 XQ. And is he connected with the Millers Falls Company? A. Yes, he is.

46 XQ. Is he still the district supervisor of an area that would cover Mississippi? A. No, he is not.

47 XQ. Where is he now located? [8] A. He is in Atlanta but there has been a switch or a change in the territories, and the State of Mississippi now comes under the jurisdiction of a man by the name of H. E. Held; H-e-l-d.

48 XQ. How long has that been in force approximately? A. Approximately 18 months.

49 XQ. But in 1952 this gentleman by the name of Creller was the district supervisor? A. District manager,—

50 XQ. District manager. A. Yes.

51 XQ. —of the area which included Mississippi? A. That is correct.

52 XQ. And Mr. Creller is still working for the Millers Falls Company? A. Yes.

53 XQ. And his offices are presently located in Atlanta, Georgia? A. That is correct.

54 XQ. As a district manager in Texas— Is that where you said you were? A. Yes.

55 XQ. Do you mean that you were physically living in Texas? A. Yes.

56 XQ. Well, now, was that where you were located in 1952, physically located? [9] A. Physically located.

57 XQ. In Texas? A. Yes.

58 XQ. How would you know what the Millers Falls Company was doing up here in Greenfield, Mr. Lyman, if you were physically located in Texas? A. Well, it was my responsibility to sell their products.

59 XQ. But not in Mississippi. A. Not in Mississippi.

60 XQ. You see, the incident out of which this suit arose occurred in Mississippi. A. I see.

61 XQ. And that is why I am bringing that to your attention. Now in 1952, Mr. Lyman, how long had you been in Texas, approximately now. I am not trying to tie you down. A. Let's see. I went down there in 1946.

62 XQ. Had you been living in Texas continuously since 1946? A. Yes.

63 XQ. When did you return to New England? A. In January of 1955.

64 XQ. In January of 1955. You were in Texas from 1946 to January, 1955. Is that right? A. That is correct. [10] 65 XQ. Well, now, isn't it a little difficult, Mr. Lyman, to say that you have personal knowledge, in view of your residence in Texas, as to what the practice was here in New England in 1952? A. I don't think so, insofar as bench grinders are concerned. We have only marketed one line of bench grinders in the 18 years that I have been with the firm. They have never changed. I previously, prior to going to Texas,—I was in the office here in Greenfield and I remember, of course, with whom we were doing business, bench grinder wise, at that time.

66 XQ. But you left to go to Texas in 1946. A. That is true.

67 XQ. Is Millers Falls' office in Greenfield the so-called head office or home office of this Millers Falls Company? A. Yes, it is.

68 XQ. Would there be someone there while you were in Texas who was handling orders, sending orders out to some companies to make bench grinders? A. I should think our purchasing agent would be.

69 XQ. Who was the purchasing agent in 1952, would you recall? A. Yes, a Mr. Charles Parsons.

70 XQ. Is he living or dead? A. Yes, he is alive.

71 XQ. Is he still connected with the company? [11] A. Yes, he is.

72 XQ. Is he located in Greenfield? A. Yes.

73 XQ. And is he actively associated with the Millers Falls Company? A. Yes, he is.

74 XQ. In what capacity now? A. Purchasing agent.

75 XQ. Was he the purchasing agent, to your knowledge, in 1952? A. Yes, he was.

76 XQ. Were you personally subpoenaed to come today or was the subpoena running to some person connected with the Millers Falls Company who might shed some light on whom they bought their bench grinders from? A. I was personally subpoenaed.

77 XQ. Did you have some knowledge—You can answer this just Yes or No. Did you have some knowledge of the gist of this case before being subpoenaed to come here? A. Yes.

78 XQ. You don't make any claim that you were the person who sold the particular Millers Falls bench grinder that might or might not be involved in this action, do you? A. Would you repeat that?

79 XQ. Yes, I would be happy to. You don't make any claim that [12] you personally sold a bench grinder that might be involved in this particular action? A. No, I make no such claim.

80 XQ. You make no such claim, no. You say that the company sends name plates. You are talking of the practice that you know of, particularly right now. That is what you are doing as sales manager. You send name plates to this other company that manufactures bench grinders. A. Our firm does that, yes.

81 XQ. This other company doesn't put their name on it at all, the Hoover Company. A. No.

82 XQ. They just put the Millers Falls name on it. A. It is a stencil; a brass trademark which goes on the grinder itself with escutcheon pins.

83 XQ. With what? A. I call them escutcheon pins. You might call them tacks.

84 XQ. The only identified name on that grinder is Millers Falls. A. That is correct.

85 XQ. Does the bench grinder that you order from

Hoover Company now come to your plant's office in Greenfield, Massachusetts? A. Yes.

86. XQ. What sort of a container does it come in?

[13] Mr. DURKIN. Excuse me. I think a time should be specified in that question.

The COURT. I think you are referring to the present, are you, Mr. Reynolds?

Mr. REYNOLDS. Yes. I would be happy to stipulate this is what this man knows.

87 XQ. I am asking now as to what you know yourself right now. When this comes up there now, what kind of a container does it come in? A. In what would be considered a shipping container.

88 XQ. What is it made out of? A. They sometimes use wooden packing cases.

89 XQ. Wooden packing cases? A. Yes; and frequently they also use heavy shipboard or corrugated carton.

90 XQ. Is that something like Masonite? A. No, it is a number of plies of cardboard, I think you would call it.

91 XQ. How much would this grinding wheel weigh now? A. Bench grinder or grinding wheel?

92 XQ. How much does the bench grinder weigh when it comes to your place now in Greenfield? A. The shipping weight is approximately 80 pounds.

93 XQ. When that comes to your place at Millers Falls in Greenfield [14] now, what is done to it? You said, I think, it was stored for future sales: A. Yes, they go into what we consider our finished goods stock and when we receive an order for one, they are merely then stenciled, not on the inside but on—the outside of the shipping carton is re-stenciled and shipped out. The cartons, in other words, are never opened.

94 XQ. The carton in which you receive this machine, grinding machine from the Hoover Company is never opened by you, by your company— A. Never.

95 XQ. — at Greenfield, but it is stored there, is it? A. Yes.

96 XQ. —awaiting a sale for that particular model. A. That is correct.

97 XQ. And it is handled when it comes in by your employees. A. Yes.

98 XQ. It comes in by motor freight probably or freight — A. Ordinarily it would be motor freight.

99 XQ. Motor freight in Greenfield. There aren't too many— A. We have railroads.

100 XQ. Yes, I know, but you get most of your deliveries by motor freight from New Jersey. A. Yes.

[15] 101 XQ. That is where this Hoover Company is located, isn't it? A. Yes, it is.

102 XQ. You know that of your own personal knowledge? A. Yes.

103 XQ. And it comes in in a carton. It is taken off a motor freight— Do some of the Millers Falls employees unload the motor freight that contains these bench grinders? A. I cannot answer that.

104 XQ. But it gets unloaded in some fashion and gets into some warehouse or plant of the Millers Falls in Greenfield. A. Yes, and stocked.

105 XQ. And is it stocked by your employees; the physical thing? Is it placed in a certain warehouse by your employees? A. I would say Yes.

106 XQ. Does the bench grinder, to your personal knowledge, when it comes now, these days, from the Hoover Company in New Jersey by motor carrier, is it a complete outfit with grinding wheels already on it or emery wheels, or however you want to describe them? A. Yes, it is.

107 XQ. And you people don't open up the carton to make any examination to see whether or not a grinding wheel has been damaged in transit, for one thing, do you? A. No, we do not.

108 XQ. Then it is placed in a warehouse or a shop of some kind [16] of the Millers Falls awaiting future sales. We have covered that. A. Yes.

109 XQ. Then you get an order to ship one of those somewhere around the country. Right? A. Yes.

110 XQ. You go to this—either a wooden box or a heavy corrugated cardboard, ply cardboard, affair. A. Yes.

111 XQ. It is a pretty heavy box, isn't it? A. Oh, yes.

112 XQ. You go to that box that this bench grinder is in, that is completely set up, that has the Millers Falls name on this plate that has been attached to it with these escutcheon pins. Right? A. Yes.

113 XQ. Then you instruct your employees to—is that lifted up or put on some sort of a hand truck? A. Ordinarily it would be.

114 XQ. Put on a hand truck? A. Yes.

115 XQ. And it is pushed across the floor to some other motor carrier presumably. A. Yes.

[17] 116 XQ. Or could it also be shipped by what we used to call steam freight; but we don't have any steam engines any more so Diesel freight, we will call it? A. Yes.

117 XQ. Some are shipped by Diesel freight and some are shipped by motor carrier. A. That is true.

118 XQ. And your employees just take and put a new serial number on the outside. Whether it is a box or corrugated carton, you put a new serial number. A. No, we do not put any serial number on it.

119 XQ. You put some identification on it so that you can tie it up with the order you are sending out. A. It says on the end of the carton it is a Millers Falls number—76 or 77 or whatever the case might be—bench grinder. That is stenciled on the end of the box as we receive them.

120 XQ. As you get them from the Hoover Company? A. Yes.

121 XQ. And before they are stored away? A. That is correct.

122 XQ. In putting that stencil of the Millers Falls Company on that carton, your employees have to handle that carton which contains the bench grinder that already has on it [18] two emery wheels. Is that right? A. That is true.

123 XQ. And they have to tip that up on end if they are going to put the stencil on each end. A. Not necessarily. They can put it on the top.

124 XQ. Would you say that the general shape of the bench grinder as it comes to you from the Hoover Company is rectangular? A. Yes.

125 XQ. And is there any requirement that the Millers Falls trademark and number of the grinder be put on either end or the top or the bottom of it? A. Normally on the end of the carton it will say Millers Falls No. so-and-so bench grinder.

126 XQ. This is a pretty rough description, but assuming— It is simply rectangular in shape? A. Yes, sir.

127 XQ. The ends you are talking about would be right here and here. (indicating) That is right, isn't it? A. Yes.

128 XQ. And on these ends is where the emery wheels are. Inside, I mean. A. They wouldn't be as far out as the end of the box.

129 XQ. No, but they would be near the end of this. (indicating) A. Nearer the end than the center.

[19] 130 XQ. In other words, they wouldn't be near this side. A. Yes, they would be close to that too.

131 XQ. But they wouldn't be near the middle. A. No.

132 XQ. What makes it rectangular in shape is that the grinding wheel is longer one way than it is wide, isn't it? It is not merely square. A. No, it is not. It is rectangular in shape.

133 XQ. Do you ever see the workmen tip those cases up to put a stencil on, "Millers Falls"? A. No, that was done before we received them.

134 XQ. Who puts that on? A. The source from which we buy them.

135 XQ. Hoover Company? A. Yes.

136 XQ. That stencil on the end is put on by the Hoover Company then? A. That is correct.

137 XQ. And it is not put on by your employees— A. No.

138 XQ. —because when those cartons come to you, they contain the bench grinders that already have on the ends, "Millers Falls Grinder No. so-and-so." A. That is true.

[20] 139 XQ. Now we will get back again to when you are going to send out the order to a customer of yours. Is there any further stenciling done to that case, whether it is wood or cardboard, that this bench grinder has come in? A. Yes.

140 XQ. What do they do, Mr. Lyman? A. On the top of the rectangular case we would stencil the name and address of the customer and probably indicate his purchase order number.

141 XQ. And that is put on by one of your workmen? A. Yes.

142 XQ. Then after that it is hand-trucked to either a motor carrier or a Diesel carrier. A. It might be on a conveyor too.

143 XQ. Or a conveyor? A. Yes.

144 XQ. A conveyor is a series of metal rollers over which a continuous belt runs. Is that the idea? A. There is no belt.

145 XQ. Just the rollers? A. —that are used in shipping rooms for heavy cases.

146 XQ. They are a little inclined, aren't they? A. No, we just push this by hand from position to position.

147 XQ. It is loaded onto the freight and delivered to the customer. [21] A. Yes.

148 XQ. As far as you are concerned, you make no inspection of the machine that comes to you from the Hoover Company to see whether there has been any defect or flaws in it or anything. A. That is correct.

149 XQ. When you ship out a grinding machine, a bench grinder, with emery wheels already attached, you have to assume that it is all in first-class shape. A. That is true.

150 XQ. If there is, in fact, any broken wheel on that machine or if there is, in fact, anything wrong with the machine itself, that is something that is not discovered by you when you ship it. A. That would be true.

151 XQ. In fact, let me ask you one other thing, Mr. Lyman. Does the Millers Falls Company at Greenfield stock individual emery wheels of a 7-inch size? A. Presently, no.

152 XQ. Have they, to your knowledge, in the past? A. yes, we have.

153 XQ. Within the past five years whose emery wheels did they stock of a 7-inch size, to your knowledge?

Mr. DURKIN. If he knows.

The COURT. If he knows.

[22] A. We have purchased some from the Norton Company.

154 XQ. Where are they located? A. In Worcester, Massachusetts.

155 XQ. What is the color of their label? A. I can't tell you that.

156 XQ. While you were in Texas in 1952 would you have occasion to order emery wheels sent to your office or to your customers from the head office, so-called, in Greenfield? A. Yes, we offered them for sale but seldom sold any.

157 XQ. And the 7-inch grinding wheels that you had to do with in 1952 were made by Norton Company. A. Yes.

158 XQ. And Norton Company is located in Worcester somewhere. A. Yes.

159 XQ. You don't recall the color of the blotter that was on the Norton wheels that your company handled in 1952. A. No, I do not.

Mr. REYNOLDS. I think that is all, your Honor.

Redirect examination by Mr. Durkin.

160 Q. Mr. Lyman, the outline of practice, and so forth, that you have just told Mr. Reynolds, was that the same type of practice and procedure that was followed when you yourself were present physically at the Greenfield office of your company? [23] A. Yes.

161 Q. There wasn't, or was there any change in any of the details as you have outlined them? A. To the best of my knowledge, no.

162 Q. At that time was the stencil affixed by Hoover to these bench grinders? A. Yes.

The COURT. When you say at that time, what time do you mean?

Mr. DURKIN. (To the Witness). During the other percentage of the time you worked for the company 18 years, sir.

163 Q. Do I understand that the practice—the name plate was affixed at that time? A. Yes.

164 Q. This supply of emery wheels that you say you kept, or that was at Millers Falls, was that for a general sale or was that on a special order? A. It was what we classified as accessories, and sometimes some of our distributors would request a grinding wheel to go on some machine that they already had.

165 Q. But the practice, as followed by the Millers Falls Company, was that the container, as received by the Millers

Falls Company from the Hoover Company, was never disturbed in any way. [24] A. This is the bench grinder container?

166 Q. Yes, sir. A. No, never disturbed.

167 Q. Never disturbed in any way? A. Never disturbed.

168 Q. And as you told Mr. Reynolds, if the wheels were cracked, if there was anything wrong with the machine, you wouldn't even know that. A. That is correct.

169 Q. And the reason for that is you never opened the box, or the box was never opened. A. That is correct.

170 Q. This question of your being subpoenaed, did you ever talk to me about this case before you came in here today? A. Not before today.

Mr. DURKIN. Thank you, sir; that is all I have.

Recross-examination by Mr. Reynolds.

171 XQ. Mr. Lyman, in your redirect examination just now, if I understood you correctly, you said substantially that if one of your distributors requested a grinding wheel, which had become broken in some way,— A. Not necessarily broken; possibly worn out.

172 XQ. All right; worn out. Let's suppose we say if one of your disfributors requested a grinding wheel for any [25] reason, you would send him a Norton grinding wheel? A. Yes.

173 XQ. No question about that, is there? A. We have discontinued stocking wheels now but in those days we did carry a stock of various sizes and shapes.

174 XQ. Back in 1952 and 1953 you did have Norton wheels on hand for sale to your distributors if you were asked to send them. A. Yes, that is correct.

175 XQ. And that included the 7-inch grinding wheel or emery wheel, however you describe it. A. Yes.

176 XQ. And you know that of your own personal knowledge. A. Yes, I checked it. I asked our purchasing agent about that. That was before I came down here.

Mr. DURKIN. I will have to ask that portion of Mr. Lyman's testimony be stricken. If it is the report of a sales manager, I don't know whether or not it would be competent.

Mr. REYNOLDS. I am afraid we will have to strike it all. That is probably what the whole thing is.

That question hasn't been answered, has it?

(Answer to Question No. 176 read by reporter).

The COURT. What do you say, Mr. Durkin?

[26] Mr. DURKIN. I will withdraw it.

177 XQ. When you were in Texas, Mr. Lyman, around, say, from '52 and '53, do you have any recollection as to whether you ordered a grinding wheel for any of your customers; and that a Norton wheel was supplied to them in response to your request? A. I can't remember such an occasion.

178 XQ. But you don't deny that there could have been such occasions? A. Oh, no.

179 XQ. And you won't deny that if, when you were in Texas in 1952 and 1953, you had had a request from one of your distributors for a grinding wheel or an emery wheel, you would have sent him a Norton grinding wheel or emery wheel. A. Yes.

Mr. REYNOLDS. I think that is all, your Honor.

Redirect examination by Mr. Durkin.

180 Q. Mr. Lyman, it is a fact, is it not, sir, that if you placed an order with your home office for an emery wheel for a customer during the years as outlined by Mr. Reynolds, when you placed the order with the home office, the delivery would be made directly to the purchaser? A. Yes.

[27] 181 Q. And you wouldn't have any knowledge at all, would you, sir, just what wheel they sent him? A. No.

182 Q. Can you tell us—I think you said before that your company manufactures a grinder or a type of grinder aside from a bench grinder. A. That is true.

183 Q. Can you tell us whether or not that other type grinder, whatever it be, required an emery wheel on it? A. Yes.

184 Q. Can you tell us from your own knowledge and experience whether or not on those machines a Norton wheel was attached? A. Yes.

Mr. DURKIN. That is all. Thank you very much, sir.

Recross-examination by Mr. Reynolds.

185 XQ. I would like to clear up just one other thing, Mr. Lyman, with regard to this so-called re-re-direct, I guess it would be, when Mr. Durkin asked you if a customer ordered a wheel, that, of course, the wheel would be sent directly from the home office to the distributor. A. Yes.

186 XQ. In the course of your work as a district sales manager [28] for that region did you have to call on distributors? A. Oh, yes.

187 XQ. Did you ever see any wheels in your distributors' places of business that had been ordered from your home office? A. No.

188 XQ. You never saw any. Then what was the basis for your saying to me that you believed that they were Norton wheels if you didn't actually see some wheels that had been ordered by some of your distributors occasionally? A. Those wheels that we have ever stocked, or those that we did stock were Norton wheels.

189 XQ. The only wheels you ever heard of your company having in stock were Norton wheels. A. That is correct.

Mr. REYNOLDS. That is all.

Mr. DURKIN. Thank you, Mr. Lyman.

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[29] JOHN P. BRADY, Sworn.

Direct examination by Mr. Durkin

1 Q. Mr. Brady, can you tell us, please, what is your occupation? A. I am a chemist and chemical engineer.

2 Q. In the pursuits of either or both of those activities can you tell us whether or not you have had any experience in the testing of stresses and strains? A. I have.

3 Q. Briefly, if you will, sir, will you tell us what your experience consists of? A. During the period of years from 1929 I have been the owner and director of the Edel Laboratories in Newark, whose background and business entails the analytical, physical, and the micro- and macro-examination of those materials that are necessary to evaluate stresses and strains that have been formed on them.

4 Q. Can you tell us whether or not in the furtherance of that you have had any experience specifically in the testing of strains and stresses and akin tests to emery [30] grinding wheels? A. During that period of time?

5 Q. Tell us about all the time, if you will. A. There has been submitted to our laboratory, in which I conducted the examinations, all types, all sizes.

6 Q. Included in that type, can you tell us whether or not any of these wheels were wheels known as vitreous wheels with a grit or a grain of aluminum oxide? A. Yes, some of them were vitreous wheels or ceramic wheels.

7 Q. Tell the jury, Mr. Brady, when you say ceramic just what you mean. A. A ceramic wheel is one that is made up essentially of those minerals of the earth that in their fusion creates the bond that holds the wheel or the particles together.

8 Q. And have you had any experience in examining a finished product of that particular type in a grinding wheel? A. I have.

9 Q. Are you familiar or have you conducted any types of tests to find if there be any types of defects or flaws in such type wheels? A. I have.

10 Q. And you say you have been doing such work since what year, approximately? A. Since 1929.

[31] 11 Q. Are you presently doing that type of work? A. I am.

12 Q. Can you tell us what, if any, degrees you hold? A. I hold a degree of chemical engineer of Newark College of Engineering. I have a Bachelor of Science in chemistry from Seton Hall College. I have taken post-graduate work in physics and chemistry at the Brooklyn Polytechnic Institute, Columbia University, New York U., C.C.N.Y., and Massachusetts Institute of Technology.

13 Q. In those graduate studies that you have pursued, Mr. Brady, can you tell us whether or not the studies of stresses and strains were involved? A. In the background of the engineering studies that I have made stresses and strains and other properties of physics were constantly being employed and studied.

14 Q. You have not, or have you ever been employed actively by any manufacturer of any type of grinding wheels? A. Yes, I would say not essentially in the capacity as revolves about the manufacture of the wheel, but for other work that was necessary, that was required by their plants.

15 Q. Actually you have never been actively associated in the manufacture of any wheels. A. No, I have not.

16 Q. Can you tell us the types of tests that you are familiar [32] with, which tests are applied to, specifically, emery grinding wheels with a bonding agent of a ceramic nature and a cutting or abrasive agent of an aluminum oxide

nature? Can you tell us what types of tests you are familiar with to see whether or not that finished product is a complete and flawless product?

Mr. REYNOLDS. I object, your Honor please.

The COURT. May I have the question, please?

(Question No. 16 read by reporter)

The COURT. Now, Mr. Reynolds, what is it?

Mr. REYNOLDS. Perhaps we can step up—

(Conference at the bench between the Court and counsel as follows:)

Mr. REYNOLDS. Well, the point of my objection, Judge, is that up to this time there is no proof of any wheel manufactured by The American Emery. There is no proof of what the wheel looks like, whether it was vitreous, ceramic, or resinoid, or what type it was. There is nothing upon which this expert should be privileged to testify at this point. It is premature. There is no testimony in here that there is, in fact, a wheel belonging to this defendant.

The COURT. What do you say to that?

Mr. DURKIN. As far as the question of whether or [33] not it be a resinoid wheel or whether or not it be a ceramic wheel, Mr. Darby testified in detail yesterday concerning the type of wheel he supplied to the Hoover Company in 1952.

The COURT. Did he testify specifically that in 1952 the defendant supplied any type of wheel to the Hoover Manufacturing Company?

Mr. DURKIN. Four or five times, sir. The Court has a notation in its notes there concerning the year 1951.

The COURT. From Darby?

Mr. DURKIN. Yes, sir; and then I think the Court changed it from 1951 to 1952.

The COURT. I have this testimony in regard to Darby: That he was works manager in 1952. But I am frank to say I haven't—and there is general testimony by him that his company made and sold wheels to Hoover at some time. But there is no definite testimony, as I recall, in the year 1952 the defendant sold any type of wheel to Hoover. Can you find that? What do you gentlemen say?

Mr. REYNOLDS. Just general testimony.

Mr. REID. Just general testimony.

Mr. REYNOLDS. And even if there were, there is no testimony from anybody from Hoover to testify American [34] Emery Wheel was their sole source of supply. And, of course, this is just a speculation of the third degree, I would say, if he is permitted to go ahead to speculate because the defendant here sold stuff to Hoover and because somebody from Millers Falls says Hoover manufactured it, therefore, they used our wheel. I don't think that follows at all.

The COURT. Is there evidence at the moment in this record that the actual emery wheel which exploded was an emery wheel with a binding agent of a ceramic nature and a cutting or abrasive agent of an aluminum oxide nature?

Mr. DURKIN. No, sir; there is not. But I will represent to the Court that I have Hoover's man en route. He will be here to testify this morning. Secondly, I represent to the Court that I will prove through the various witnesses that have testified, and those to testify, that the question the Court just asked will be answered. In addition to that, the Court has a note because I remember the Court making the change, acknowledging the change in the Court's notes yesterday. The Court had the year 1951 down.

The COURT. As being the date of the accident?

Mr. DURKIN. No, concerning parts of my testimony [35] directed to Mr. Darby. I asked Mr. Darby specifically whether or not the components, the ingredients in a 6-, 7-,

and 10-inch wheel that was supplied in 1952 to the Hoover Company were exactly the same; and he answered Yes. And I said the only difference in those wheels, of course, is the diameter; and he says Yes and he says the core. That was Mr. Darby's testimony. And based upon that, if nothing else, the present question to this witness is proper.

The COURT. I am frank to say that depending solely on my recollection I am not clear in my mind whether there was any testimony by Mr. Darby that during the year 1952 these wheels were sold by The American Emery Wheel Works to Hoover Manufacturing Company.

Mr. DURKIN. Ask Mr. Reynolds and Mr. Reid what their recollection is.

The COURT. Assuming that is in the record, I think this: That in any case the order of proof isn't fixed. In other words, some latitude has to be allowed. If I have assurance from counsel that this particular testimony is going to be tied up or connected with testimony to the effect that this defendant did in 1952 sell and deliver to Hoover wheels of the type described; namely, a wheel with a 7-inch circumference, 5/8-inch [36] bore, 1-inch thickness, made with an abrasive agent of aluminum oxide and a binding agent of a ceramic nature, it seems to me that the evidence is proper. It has got to be connected up, however; and if at the proper time the plaintiff has failed to connect this evidence, I will entertain a motion to strike the testimony. I have to depend, as the trial proceeds, upon assurances of counsel that when the opportunity arises he will present the evidence. We can't do three things at once, as a practical matter.

Mr. DURKIN. I will so represent to the Court, that I will have a representative from Hoover here.

Mr. REYNOLDS. So much for that, as far as that goes. My position is it even goes farther in that this particular wheel, there has got to be evidence of it somewhere, that it

was our make. So far there is nothing to tie this with The American Emery Wheel Works.

The COURT. In the last analysis, of course, it will be incumbent upon the plaintiff to establish that the wheel which caused the plaintiff's injuries was made by this defendant. That is an essential element of the plaintiff's case.

Mr. DURKIN. Yes, sir.

(Conference at the bench concluded)

[37] Mr. DURKIN. May we have the question read?

(Question No. 16 read by reporter)

A. Yes.

17 Q. Will you tell us that test or those various tests, Mr. Brady, if there be more than one? A. In a vitrified wheel where the bonding agent makes a definite compound we call the grain structure, where the bonding agent embodies each individual component in each grain of the wheel itself, the first examination would be a visual inspection for heat cracks or strain cracks.

18 Q. For what type— A. Heat cracks or strain cracks.

19 Q. At what time in the process would that examination be made? A. That should take place just before the wheel is set up for its spin test. The spin test is a test that you set it on the spindle and run it at its critical speed or above its critical speed for 2 to 5 minutes and see if any disintegration takes place, and—

20 Q. Excuse me. A. —and after the spin test in many cases where the fine hair cracks are present, cracks that would not necessarily break up at those speeds, you give it a ring test.

The COURT. Ring?

A. (Continued) You ring the wheel with a mallet. That is [38] known to the person that is able to understand the ring of the wheel so that any flaws or cracks that would be

within it would pick up that ring and you could identify it as being something wrong with the wheel.

21 Q. When you mention about the grain and the bonding agent, if the grain particles or the grit, each grain was not completely covered by the bonding agent, can you tell us what would occur?

Mr. REYNOLDS. I object to that. There is no testimony in this case so far that each grain— We don't know what wheel we are talking about.

The COURT. Granted.

Mr. REYNOLDS. There is no testimony in this case upon which to base any such assumption, and no offer on my brother's part that he will prove any grains in any wheel were not properly bonded.

Mr. DURKIN. It is a most difficult task in any explosion case to prove the type of grain and the condition of the grain after the explosion. There just isn't anything.

Mr. REYNOLDS. If I may say a word on that point. This isn't necessarily an explosion case. We have only heard the testimony of one man whose response to a leading question called it an explosion. The wheel hasn't [39] been proffered, what remained of it. No description of the wheel has been given. I don't think we are bound to take my brother's description of explosion. It could be a lot of other things happened to that wheel. There is no description of what the wheel looked like afterwards so far. I don't understand an expert has a right to assume facts which are not in evidence and where there is no assurance upon which such facts will be proved to base an opinion.

Up to this point, I respectfully submit, there isn't any testimony along the line that has been assumed in this question.

Mr. DURKIN. I will say to the Court I do not intend to be able to prove any such fact. I will rely solely upon the cases which interpret the plaintiff's right in the types of

proof to be submitted as a reason for the breakage of the particular wheels involved.

The COURT. I think technically the objection is good insofar as the form of the question is concerned. I will sustain it on that ground.

22 Q. Mr. Brady, when a ring test is given, you say a certain sound is emitted. Is that correct? A. That is true.

23 Q. And that sound would be foreign to the sound that would be [40] emitted from a wheel which was imperfect. Is that correct?

Mr. REYNOLDS. I object to that technically only. This man is an expert. This is a leading question to an expert.

The COURT. I think it is. Suppose you reframe the question.

Mr. DURKIN. I will reframe it, sir.

24 Q. Can you tell us, Mr. Brady, is there any difference between the sounds emitted in the type of test you have just mentioned between various types of wheels? A. Yes, there is.

25 Q. Will you tell us what they are, sir? A. In the examination of a wheel you give it the ring test. There is a true sound that every wheel reverberates that is different in each wheel. But in particular wheels of the same construction it is similar, and a trained observer can tell immediately by the sound that comes back from ringing that wheel whether something is wrong or not with it.

26 Q. When you say the sound comes back detecting something is wrong with it, can you tell us what there would be to cause the emitting of such a sound?

Mr. REYNOLDS. I object to that at this stage for [41] the same reason. Up to this point there is no proof that there was anything wrong with any wheel. We haven't had any evidence so far connecting up any wheel with this defendant. I object at this point.

The COURT. That is true. And as I have indicated to counsel, the question of order of proof is something that of necessity must vary with the convenience of counsel and availability of witnesses, and I think it is a matter where the Court in its discretion has to rely on assurances of counsel. I will allow that question.

Mr. DURKIN. May we have the question read?

(Question No. 26 read by reporter)

A. The factors that would involve a sound return in ceramic material would be anything that would tend to absorb the true noise of the wheel itself. Those things can be change in density over this structure of the matrix of the wheel. It can involve cracks. It can involve materials that would cause voids or unconnected linkage between the bonding material and the particles themselves. And these are critical elements in ringing a wheel.

27 Q. Will you tell us what the matrix of the wheel is, Mr. Brady? A. That is the composition of the wheel as it is completely mixed together, so that is the cohesion of the particles or a single unit when the wheel is finished.

[42] 28 Q. You used the word, "voids." Tell us what you mean by a void and tell us what the causes of voids in these particular wheels are.

Mr. REYNOLDS. I object. I don't want to labor this.

The COURT. That is quite all right.

Mr. REYNOLDS. I would object to this. There is no testimony of any voids in any wheels before us.

The COURT. I will allow the question. Objection overruled.

A. In the composition of mixed material of a nature such as we have here, where there is coarse material, fine material, and then limpid material—that is material that would flow—and you mix them together and you put them through

a heating process. If the material is not completely milled so that it is uniform throughout and it is put into its form before it enters the oven and then it passes through the oven and sinters it, in the roasting process the sintering of the material would tend to pull apart and leave voids. The degree of those voids would be according to the way the material had been mixed and according to the various mixtures of the ingredients that had gone into it. It also would be a part of the way they had cooled in certain sections of that mixture. That [43] is when it is not truly a homogeneous mix.

29 Q. I think you have told us about the effect or the end result of a ring test to a wheel which contains such a void. A. Yes. I indicated to you that in the passage of the sound through the wheel, it would tend to break in that period and give a different resonance to the ear of the experienced tuner.

30 Q. Applying our questions and answers temporarily, Mr. Brady, to the spin test, I think you said—and it has been testified—that the spin test is a test in which a wheel is put on an arm of a motor and it goes a certain amount of r.p.m.'s per time of interval. Now can you tell us whether or not the mere fact that a wheel being tested is put on a spindle or an arm and rotated at a speed three to four times the speed that is to be recommended for the use of that wheel—can you tell us whether or not that type of test will in and of iself detect any flaws, if there be any flaws, in the wheel being tested?

Mr. REYNOLDS. I object to that. For an expert he can answer that Yes, which isn't much of an answer from an expert. I think the question is in improper form. He should be asked what are the results of the spin test. I [44] thought we had already been through that. This question is a leading question. All he has to do is say Yes and the question is answered. I object.

Mr. DURKIN. Mr. Reynolds, I respectfully submit, can cross-examine on any point he thinks I am improperly questioning the witness on.

The COURT. That is true. But may I have the question, Mrs. Archambault?

(Question No. 30 read by reporter)

Mr. REYNOLDS. He also has two questions in it.

The COURT. That is a little involved.

Mr. DURKIN. Shall I withdraw it?

The COURT. Suppose you simplify it.

31 Q. The spin test, Mr. Brady, we have been talking about, and so forth, tell us what it does. A. In the case of the spin test all of the particles that the wheel revolves about a spindle have a force of motion outward, away from the center of the wheel, and each individual particle in that wheel has that force exerted upon it to throw it out. If there is a crack that is not a part of the body of that wheel, when the wheel goes above its critical speed, that wheel will tend to part at that crack and be thrown apart. And the idea of the spin test is essentially to find out whether that [45] condition exists in a wheel, and the operator usually protects himself very thoroughly against the condition by masking it under some suitable coverage.

32 Q. Are you familiar or have you ever given a particular spin test to these types of wheels? A. I have given the spin tests.

33 Q. Can you tell us whether or not there is a distinction between applying to a wheel this particular spin test and applying to this wheel the intended force or intended use in actual industry?

Mr. REYNOLDS. I object to that because of my brother's use of the word, "this" wheel.

The COURT. "A" wheel would be better.

Mr. REYNOLDS. The question could be read as if there were some wheel presented to this witness.

34 Q. So there will be no objection here or on the record, Mr. Brady, I am not referring to any one specific wheel; I am referring specifically to a 7-inch emery wheel, the components of which consist of a ceramic bond and an aluminum oxide grit. Is there any misunderstanding on that, Mr. Brady? A. No, there is not.

Mr. DURKIN. (To the Witness) May I have the question answered now, sir?

[46] Mr. REYNOLDS. I would suggest he rephrase the question so there won't be any argument at any time.

The COURT. I think the original question with the substitution of the word, "a," would have been a simpler way of doing it.

Suppose you read the question back to the witness substituting the word, "a," for the word, "the."

Mr. REYNOLDS. I think he used the word, "this."

(Question No. 33 read by reporter as follows:

"Can you tell us whether or not there is a distinction between applying to a wheel this particular spin test and applying to a wheel the intended force or intended use in actual industry?")

A. Yes.

35 Q. Will you tell us what that is, sir? A. A wheel that is spinning freely—the strains or the stress that may be operative within the intrinsic matrix of that wheel will vibrate and if they are of such a nature, will weaken it and disintegrate it. If within the same matrix there are other conditions, such as a void that we described here a short time ago, or such as unconnected pieces of either the alundum oxide or the sintering clay, they would not effectually be disturbed by the spinning of that wheel. But when added

forces were applied to that wheel so that the strain became [47] unbalanced through those areas, then they would tend and could tend to weaken the wheel and cause it to fracture. In, fact, on the outside periphery of the wheel this occurs many times.

36 Q. In addition to that, Mr. Brady, can you tell us whether or not any heat is generated by, first of all, just the wheel spinning on a spindle? A. Very little but some is.

37 Q. Is the degree of heat increased or decreased, depending upon the length of time the wheel is in operation? A. Yes, the heat would be increased.

38 Q. Increased. Can you tell us whether or not much heat is generated in a 2-minute spin test? A. Well, there is very little heat generated in a spinning wheel that has no work being done upon it.

39 Q. Can you tell us whether or not, Mr. Brady, heat as an agent has any effect upon the structure of an emery grinding wheel? A. Heat as an agent, of itself, has an effect on any type of a grinding wheel.

40 Q. Coupling heat with any type of agency that is being applied to the periphery of that wheel, can you tell us whether or not there is a distinction upon the effect of the wheel that has run for a time, say 5 or 10 minutes, [48] and the effect upon that same wheel when it is given a spin test unaffected by any foreign agent?

Mr. REYNOLDS. May I have that question, please?

(Question No. 40 read by reporter)

Mr. REYNOLDS. I don't understand that, your Honor. I object to that on that ground.

Mr. DURKIN. I didn't get the grounds.

Mr. REYNOLDS. I don't understand it.

The COURT. Suppose you simplify it. I think the Court has your idea. Maybe it can be made a little simpler.

41 Q. Mr. Brady, when a wheel rotates on the spin test there are certain effects imputed to that wheel. Can you tell us whether or not that effect upon that wheel is the same effect as the effect on that wheel after it has been running for a period in excess of 10 minutes, and which wheel has a foreign agent or some type of appliance being applied to the periphery of that wheel? A. Yes, I can.

42 Q. Will you tell us what that is, please? A. In a free spinning wheel, which we described previously, the amount of heat that is engendered at its periphery or through the entire body of the wheel is, of necessity, very small. When you apply a force to the periphery of [49] that wheel, you tend to create friction between the two bodies. And depending—according to the hardness or density of the force that you are applying there, the heat can vary over quite a wide space of degrees. That can produce a wheel from what might be considered a fairly cold running wheel to one that would be very, very hot, so hot that you couldn't touch it. And naturally the crystal structure in that wheel of both the aluminum oxide and the new ceramic material, that has worn the bond between those particles, vibrates according to the heat that is set up in there.

43 Q. In the spin test of 2 minutes is there any effect upon the crystallization of the ingredients of that wheel? A. Very little; some.

44 Q. When the spin test is being administered to this type of wheel, I understand you to say that the vector force or the direction of the force runs from the core to the periphery. Is that correct? A. That is right.

45 Q. That also is true when the wheel is in actual operation. A. That is true.

46 Q. Can you tell us in which direction the vector force or stress goes when there is some type of agent applied to the periphery of that wheel? [50] A. According to the force that is applied, each reaction has its own force that

gives a counter reaction, so under those conditions, and describing the parallelogram of forces, the opposite effect would be produced into the wheel itself, setting up the friction that I described previously and causing the counter effect upon the surface of the particles within the wheel.

47 Q. Is there any such counter effect applied to this wheel when a spin test is given? A. No, there is not.

48 Q. Can you tell us, Mr. Brady, if you are familiar with any other types of tests besides the spin test and the ring test? A. There are other types of tests that are used under certain conditions in which you pick up the sonic vibrations within the wheel that would indicate the voids and fissures that might take place. There is also the means of visualizing the complications that would occur in the cross structure of the wheel by the X-ray analysis. And then the typical sectional examination that is peculiar to the laboratory itself and which we are doing at all times on this wheel involves the micro- and macroscopic examination of it.

Mr. REYNOLDS. I move the word, "this" wheel in [51] that answer be stricken on the ground of possible confusion because there is no wheel before the witness.

Mr. DURKIN. I will consent to it being withdrawn.

The COURT. It may be withdrawn. There is no wheel before the witness.

49 Q. Now, Mr. Brady, assume, if you will, that I had here a wheel manufactured by The American Emery Wheel Works of Providence, Rhode Island, and I gave you that wheel and I asked you to apply whatever chemical tests you were familiar with to that wheel, could you tell me after your tests whether or not that wheel was manufactured by The American Emery Wheel Works of Providence, Rhode Island?

Mr. REYNOLDS. I object. In the first place, there is no wheel before the Court that was involved in this accident

and I don't believe we are interested in any other wheel of the countless others that may have or may not have been made by this defendant or by any of the other—not the defendant—people who make emery wheels. I think it is going to be confusing to the jury. It is not going to serve any purpose in this case particularly when so far the responsibility of this defendant, The American Emery Wheel Works, has not been tied up to the wheel that Whit Mason said he was working on on February 10, 1953.

[52] The COURT. I understand that. But as I comprehended the question, it is merely a question directed to this man as to his ability to identify a wheel being manufactured by the defendant.

Mr. DURKIN. That is correct, sir.

The COURT. In other words, it was in the nature of a preliminary question as to the capacity or ability of this witness to make identification.

Mr. DURKIN. That is correct, sir. Well,—I think we had better talk at bar.

(Conference at the bench between the Court and counsel as follows:

The COURT. Will you please read the question, Mrs. Archambault?

(Question No. 49 read by reporter)

The COURT. I don't quite comprehend that question.

Mr. DURKIN. Here is the purpose of the question.

The COURT. You are assuming something.

Mr. DURKIN. I don't think I am assuming anything.

The COURT. Your question says—

Mr. DURKIN. I agree. Well, I will rephrase whatever type of question you want. I want to know from this witness if I took one of the wheels of this defendant and handed it to him, any wheel at all, whether or not this [53] witness

could, by chemical or any type of tests, specifically say to me, "This wheel is a wheel of this defendant and is not a wheel of any other defendant" or "of any other manufacturer;" not "defendant," of course.

Mr. REYNOLDS. He hasn't qualified to that ability. Stresses and strains are all he said he studied so far.

Mr. DURKIN. He has a degree in chemical engineering and other degrees. He so testified.

The COURT. If this is what you are endeavoring to ask the witness: "If I were to show you an emery wheel, could you by any test determine by what person or firm that wheel was manufactured," without reference to this defendant or any particular manufacturer,—

Mr. DURKIN. I will adopt that question.

Mr. REYNOLDS. He hasn't presented any alleged qualifications to limit it to that.

Mr. DURKIN. I will do that if that be necessary but he has already testified he has a degree in engineering and chemical engineering. He has a degree in chemistry from Seton Hall. I will go into it.

Mr. REYNOLDS. He has to explain what the test is. I don't think it is relevant anyway.

The COURT. Once again, in these questions of the [54] qualifications of an expert there is considerable latitude, and the objection in the last analysis goes more to the weight to be given to the opinion than it does to its admissibility. I think, frankly, the defendant's objection—Also, you were making a certain assumption in the question I don't think you should make at this stage. If he has the ability to look at an emery wheel and say who manufactured it,—

Mr. REYNOLDS. Without knowing in advance where it came from; just a blank wheel.

Mr. DURKIN. Be glad to. That is all right.

(Conference at the bench concluded)

50 Q. Mr. Brady, did I understand from your qualifications that you have a degree in chemical engineering? A. That is right.

51 Q. And that you have a Bachelor of Science degree from Seton Hall University? A. That is right.

52 Q. Mr. Brady, can you tell us whether or not, if an emery wheel of this particular nature was given to you, could you by any types of tests, by looking at this particular or that particular wheel, tell us, as a result of those tests, who manufactured that particular wheel?

Mr. REYNOLDS. I object, your Honor please.

[55] The COURT. Now what is the objection?

Mr. REYNOLDS. This is a new question that has been asked, and I would like to have my objection noted to this question. He keeps talking about "this" and "that" wheel. That is in this question. I want it to appear that there is actually no wheel before this witness.

The COURT. I think perhaps, Mr. Durkin, if I may make a suggestion: "If you were shown any emery wheel of the size of 7-inch circumference, 5/8-inch bore;" "any emery wheel." I think that will do it.

53 Q. Any emery wheel containing the components which are under discussion here. Do you understand the question? A. I do.

Mr. REYNOLDS. If there have been some amendments, for fear I might lose my rights, I would like to object to the question as amended.

The COURT. Objection overruled. If you understand the question, Mr. Witness, you may answer it.

The WITNESS. I do.

Mr. DURKIN. Will you tell us your answer to that, please?

A. (Continued) The only thing I could tell you about a wheel that would be submitted to me for physical and chemical examination was its physical and chemical characteristics.

[56] 54. Q. When you excised or extracted from any wheel that you analyzed, can you say from that result whether that or any wheel was manufactured by "A," "B," or "C" Company?

Mr. REYNOLDS. I object for the same reason.

The COURT. Objection noted and overruled.

Mr. DURKIN. Do you understand the question?

The WITNESS. I do. I am just trying to compose my own thinking on it.

A. I could not say in the examination of any wheel that was submitted to me as a wheel who the manufacturer of it was.

55 Q. Can you tell us why you could not tell us or tell from the examination of any wheel who its manufacturer was?

Mr. REYNOLDS. I object again.

The COURT. Objection noted; overruled. All right.

A. The manufacturer of a wheel can make a wheel that would duplicate in certain characteristics wheels of many companies. Unless I had specifically their product in my hand to make the comparison both physically and chemically, I could not relate it to any manufacturer—the wheel that I had in for the analysis.

56 Q. Could you tell us, Mr. Brady, whether or not for you to say any wheel was manufactured by "X" Company, would you have to know what the formula used by "X" Company was?

Mr. REYNOLDS. I object. This one I object for [57] the additional ground the witness has already testified from a physical and chemical analysis of any wheel he could not tell who the manufacturer was. That is his testimony. I object, therefore, for that additional ground.

The COURT. Objection overruled.

A. I would require either some of their properties or their formulations.

57 Q. You mentioned before, Mr. Brady, about a test concerning—I think you mentioned a sonic test. Was that it? A. That is right.

58 Q. Tell us how a sonic test is applied to a wheel, if you will, please. A. A sonic test is a means of setting up within the wheel reverberations that can be read and indicate changes in the structure of the wheel.

59 Q. Are these indications manifested on a machine of any sort? A. On a dial reading, yes.

60 Q. Have you ever seen one of these sonic machines? A. I have.

61 Q. Have you ever actually been present when they were being used? A. Yes, I have seen it used.

62 Q. According to the dial, which is the result of sounds being [58] emitted into that wheel, tell us what the dial indicates. A. That would be actually what happens. What is indicated is when the responses reach certain depths, it is picked up and registered so it can be noted. Or in the case of a wet needle it can register on a graph, showing that over a transposed face you will get certain readings. If there is any changes in it, the variations will show on there. If it is uniform, it will have a uniform reading throughout the entire field.

Mr. DURKIN. I think that is all, Mr. Brady. Thank you.

Cross-examination by Mr. Reynolds.

63 XQ. Mr. Brady, you say you came from Newark? A. Newark, New Jersey.

64 XQ. New Jersey. A. Yes.

65 XQ. And you were acquainted with Mr. Durkin, who also comes from Newark, before coming to court, were you? A. I was.

66 XQ. Have you testified for Mr. Durkin in other cases involving emery wheels? A. I have never testified for Mr. Durkin before.

67 XQ. Have you ever testified concerning emery wheels before, before today? [59] A. I may have testified concerning emery wheels before today, yes.

68 XQ. Did you testify for the plaintiff, the person who is attempting to seek damages, or for the defendant, the person who is alleged to have made or sold the wheel? A. I beg your pardon?

69 XQ. I say did you testify for the plaintiffs who were seeking to collect damages, or did you testify on behalf of the defendant in those previous cases, who either made it, distributed it, or sold the wheel? A. It could be either way.

70 XQ. What is your present recollection? A. It would be either way.

71 XQ. Can you recall any particular case— Now what is the latest time before today that you appeared in a case involving an emery wheel in any court in the United States? A. I honestly don't know.

72 XQ. It could have been one year ago or ten years ago. Is that right? A. It could have been, say, one year ago or five years ago.

73 XQ. You haven't any present recollection of anything about testifying in any particular case for the past five years. A. The only reason—in any particular case?

74 XQ. Concerning emery wheels. [60] A. Well, the only reason I am a little bit nonplussed on it is because of the amount of work in this field that varies through testing wheels and other material, and I can't justifiably say when I did appear in court and testify on an emery wheel case.

75 XQ. I am not asking you to give us the precise day of the week, date of the month, or even year. I am just asking you to give us your best recollection as to whether you testified in an emery wheel case within the past six months, the past year, year and a half, or two years; whether it was in New Jersey, Georgia, or Saskatchewan, or wher-

ever it was. Don't you have any recollection of a matter of that point? A. The only reason I don't have a recollection on it is that most of the emery wheels, when you are finished with them, it is so conclusive one way or another that they don't go any further.

Mr. REYNOLDS. I move that answer be stricken.

The COURT. It may be stricken.

76 XQ. The question is a simple question. You understand what I mean when I use the words, "appear in court"? A. That is right.

77 XQ. I didn't ask you about testing things in your laboratory. I asked you about your appearance personally in court. [61] You do understand that, don't you? A. I do understand it perfectly.

78 XQ. The next question is when was the last time you appeared in a case involving emery wheels; approximately now? A. I will guess. I will say within a 2-year period of time.

79 XQ. In what state of the United States or Canada did you appear to testify? A. New Jersey.

80 XQ. Have you ever testified in any emery wheel case outside of the State of New Jersey prior to today? A. I may have testified in Pennsylvania but I am not certain.

81 XQ. Within the two years or beyond the two years? A. Beyond the two years.

82 XQ. You are not certain whether you testified in Pennsylvania beyond the two years. A. That is right.

83 XQ. In this case that you say you have some recollection of testifying in within the past two years in New Jersey, did you testify on behalf of the plaintiff who was seeking damages or did you testify on behalf of the defendant who was either the maker, distributor, or vendor of the wheel? A. It would probably be the maker.

84 XQ. It would probably be. Don't you have any better recollection [62] than that as to whether it would probably be or it was? A. No, I don't.

85 XQ. Do you appear in court so frequently, Mr. Brady, that you can't recall and separate the emery wheel cases from some other cases that you come into court on? A. That is right.

86 XQ. Are you in court practically every week somewhere in the United States testifying? A. More than— Probably twice a week or three times a week.

87 XQ. Twice a week or three times a week you are in court testifying somewhere. Is that right? A. Well, that is right.

88 XQ. Do you testify for plaintiffs and defendants? A. Whoever brings the work to the laboratory.

89 XQ. And the name of this laboratory is what, please? A. Edel Laboratories.

90 XQ. Is that E-d-e-l? A. That is right.

91 XQ. What is the location of that? A. 18 Green Street, Newark, New Jersey.

92 XQ. Do you know Whit Mason, the plaintiff in this case? A. Who?

93 XQ. Whit Mason,— A. No.

[63] 94 XQ. —the plaintiff in this case. A. I do not.

95 XQ. Have you ever talked with Whit Mason in preparing this case for trial? A. No, sir.

96 XQ. You have talked with Mr. Durkin prior to today? A. I have.

97 XQ. How many times did you talk with him, approximately? A. About the case probably twice. I have talked to him about appearing over the telephone many times.

98 XQ. They had a bench grinder here for the edification of the jury a couple of days ago. Did you ever see a bench grinder in talking with Mr. Durkin about your anticipated testimony in this case? A. I did not.

99 XQ. You don't know who Whit Mason is? A. No. I do not.

100 XQ. Did Whit Mason or Mr. Durkin present you with a wheel which they informed you was the part or fragments of a wheel that had caused an injury to Mr. Mason?

Mr. DURKIN. Objected to as being completely immaterial. It would be hearsay as far as the witness is concerned.

Mr. REYNOLDS. It is a basis for establishing his opinion, your Honor.

[64] Mr. DURKIN. His opinion as to what?

Mr. REYNOLDS. As to what he has testified to here today.

Mr. DURKIN. I think his testimony was completely independent of any one entity.

Mr. REYNOLDS. I don't think it is quite that independent.

The COURT. I will allow the question. It may be answered Yes or No.

(Question No. 100 read by reporter)

A. Yes.

101 XQ. Where are the fragments that were presented to you by Mr. Durkin and represented to you to have been the fragments of the wheel which has allegedly caused the injury to Mr. Mason? A. Where they are right now?

102 XQ. Yes. A. I suppose they are in the custody of the lawyers; I don't know.

103 XQ. You keep some records at your laboratory, don't you, Mr. Brady? A. I do.

104 XQ. Do you have some records with you this morning that will help the jury to determine when, on what date, fragments [65] of an emery wheel were submitted to your laboratory? A. I do not.

105 XQ. You do not have any. Do you have the records with you today? Is that what you say? A. I do not have any records with me today on this case.

106 XQ. Do you have any records in your laboratory in

New Jersey that would show the date when the fragments of this wheel were presented to your laboratory for examination? A. Yes, I believe there would be records there.

107 XQ. You believe there would be records there, but you didn't bring them with you to Rhode Island today. Is that what you want us to understand? A. Well, I wouldn't bring those records per se, unless it involved the analysis, to court anyhow.

108 XQ. You wouldn't bring the records per se unless it involved the analysis. Well, now, Mr. Brady, did you come to court here today with no record whatever to use to refresh your recollection? A. That is right.

109 XQ. Not a single paper on you that you could refer to to refresh your recollection about what you know in connection with anything in this Whit Mason's case. A. That is right.

110 XQ. Well, now, will you give the Court and jury the benefit of [66] your best recollection, Mr. Brady, as to the approximate time when parts of an emery wheel were presented to you at your laboratory for examination? A. Suppose I say within 1956. Would that be satisfactory?

111 XQ. Well, what we want is your best recollection. A. That is my best. I can't give you the month or the day, but it was within the year of 1956.

112 XQ. Today, the date you are testifying, is May 29, 1956. A. That is right.

113 XQ. Was this wheel presented— Could it have been presented, according to your best recollection, some time in 1955? A. If it were, it was very close to '56.

114 XQ. And who presented it to you? A. Mr. Durkin.

115 XQ. The counsel for the plaintiff sitting here? A. That is right.

Mr. DURKIN. At this juncture I am going to have to object to each and every specific question that is directed to this witness concerning any activity that took place be-

tween this witness and myself pertaining to any rock or any emery wheel, based upon what I represented that wheel to be, as being completely immaterial and hearsay as far as this witness' testimony is concerned.

The COURT. Objection overruled.

[67] 116 XQ. Now when these fragments of the wheel were presented to you, Mr. Brady, they were left at your laboratory for some period of time, I presume. Were they? A. No, they were brought in and I examined them and they were taken away.

117 XQ. All the same day? A. Probably overnight.

118 XQ. Probably overnight? A. Yes.

119 XQ. Well, now, to the best of your recollection, will you try to indicate on this piece of paper here— Do you have a pencil, Mr. Brady? A. I have a pen.

120 XQ. Will you please indicate on that pad of paper the approximate size of the fragments—if there was more than one that you examined—that were presented to you by Mr. Durkin? A. Oh, I would be purely guessing. I wouldn't even like to evaluate them unless I saw them again.

121 XQ. You would be purely guessing? A. Yes.

122 XQ. As to the approximate size of the fragments of an emery wheel which were presented to you by Mr. Durkin. Is that your answer? [68] A. That is right.

123 XQ. Therefore, do you decline to attempt to make a rough sketch of the approximate size of the pieces of an emery wheel that were presented to you by Mr. Durkin? A. I couldn't do it. I wouldn't even— Unless I saw a piece or pieces of it so I could relate it to the wheel again, I wouldn't want to take the chance of trying to draw a diagram like that.

124 XQ. If you had brought your records with you today, Mr. Brady, that are now reposing in New Jersey, would they have assisted you in being able to recreate the approximate size of these fragments? A. The only thing

that they would have done for me at that time was possibly to place the date that the wheel was brought to the laboratory.

125 XQ. You mean your records in New Jersey would not disclose the approximate size of the fragments which were presented to you by Mr. Durkin? A. I made no report on this case whatsoever.

126 XQ. You made no report on this case whatsoever. But you did examine the fragments that were presented to you, did you not? A. No. When you say examine, that is the reason I did not make a report. I didn't give them judicious examination.

[69] 127 XQ. You didn't give the fragments judicious examination. Did you use any or all of the so-called fragments that were presented to you by Mr. Durkin in any chemical test to determine the component parts of the fragments that you had received? A. I did not.

128 XQ. Did you perform any ring test with any of the fragments that were presented to you? A. I did not.

129 XQ. Did you perform any sonic test with any of the fragments that were presented to you? A. I did not.

130 XQ. What test, if any, did you perform on these fragments that were presented to you by Mr. Durkin?

Mr. DURKIN. Is it the Court's understanding that my objection continues? I don't want to interrupt.

The COURT. There is no need of reiterating it, Mr. Durkin. To this general line of inquiry your objection has been received, noted, and overruled.

Mr. REYNOLDS. Would you like to have the pending question read?

The WITNESS. No, I know fairly well what you asked me.

A. In examining the wheel, I examined it microscopically and [70] macroscopically.

131 XQ. What is the other? A. That is examining it by looking at the fragments.

The COURT. Macro—

The WITNESS. Macro- and microscopically.

132 XQ. How do you spell the macro? A. M-a-c-r-o.

133 XQ. Did I interrupt you? You had finished, had you? A. That is right.

134 XQ. In other words, this macroscopic is just looking at it with your naked eye. Is that the idea? A. Or with my glasses on.

135 XQ. But ordinary reading glasses, nothing with any super power like a jeweler, gemologist, when he squints at a diamond; just your regular reading glasses. A. That is right.

136 XQ. Then you took a microscopic view, you put them under a microscope, the fragments. A. Put them under a low power microscope; yes, sir.

137 XQ. You say you made no report to Mr. Durkin on what you found. A. There was no report to be made. The examination was never finished; never got to a state where I could make a report.

138 XQ. Why? Because they were withdrawn from your care? A. I guess during the period of time they couldn't let me [71] study them long enough.

139 XQ. The reason then why you didn't make all of these tests that you have talked to us about today is because they didn't leave the fragments of the wheel with you long enough to make them. That is right, isn't it? A. No, that is not so. In fact, the tests that I described today would not be made on sections of a wheel; they would be made on a whole wheel.

140 XQ. All but the spin test could be made on fragments of a wheel, couldn't they? A. No, they would all be made on a whole wheel.

141 XQ. I will ask you another question. Whatever tests you had intended to make when the fragments of the wheel had been presented to you by Mr. Durkin, you did not complete all of the tests that you had intended to make because the fragments were withdrawn before you had a chance to make them. Is that right?

Mr. DURKIN. Objected to if I may. There has been no testimony this witness ever intended to make any additional tests other than the ones he has just outlined.

The COURT. I may have misunderstood the witness. I thought a moment ago he said he didn't complete his tests because the fragments were not left with him long enough. Maybe I misunderstood the witness.

[72] Mr. DURKIN. I will withdraw it.

Mr. REYNOLDS. Let's have that read.

(Questions Nos. 137 and 138 and Answers read by reporter)

The COURT. I will allow it.

142 XQ. So there were tests you intended to make on these fragments if they had left them with you long enough. A. I would have made an exhaustive study of the wheel.

143 XQ. You would have made? A. Yes.

144 XQ. Future. You didn't have the time actually to make exhaustive tests because they withdrew the specimens, the fragments, before you could do it. A. That is true. The time I wanted to make the test in, they couldn't let me have the stone that long.

145 XQ. Whether they could or couldn't, you wouldn't know, would you? All you would know was that they didn't actually leave them with you long enough. A. They said they couldn't. That was the reason.

146 XQ. That is what they told you? A. Right.

147 XQ. You didn't attempt to find out why, did you? A. I wasn't interested.

148 XQ. Will you tell us just briefly, Mr. Brady, what tests you had intended to perform upon the fragments of the wheel [73] that had been submitted to you by Mr. Durkin? A. I would have made chemical and physical measurements of the wheel.

149 XQ. By chemical, what would that embrace? What would you have done in a chemical way? A. Break down the composition of the material itself.

150 XQ. Dissolve it with some sort of acid? A. May not; may use a spectograph and probably get enough information out of that.

151 XQ. What is that, Mr. Brady? A. That is a machine that would tend to give me the value of the elements that were in the composition of the wheel. And from that I may be able to evaluate the matrix of it.

152 XQ. Well, the matrix; you mean the composition of it. A. The way it is formed in its different separate components.

153 XQ. Just like the matrix of a cake consists of the flour and the eggs and the sugar and salt. Is that a plain example? A. Before it was cooked you are talking about; I am talking about after it was cooked.

154 XQ. After it is cooked it is a cake. A. It is a cake. To analyze the wheel, I was interested in.

155 XQ. You were trying to break down the component parts of the wheel so you could say there was aluminum oxide in here, [74] there was clay or ceramic. Is that what you intended? A. That could be a good part of the work.

156 XQ. What more did you expect to get out of this? A. I would tend to get the other physical properties, its density and its relationship of the different materials that were in there to the bond.

157 XQ. The relationship of the different materials to the bond. What does that mean, please, in plain English? A. The bond is the material they use to sinter the aluminum

oxide and join it together. And in that bond there can be many materials, many foreign materials, that could be of value in the analysis of a wheel of this kind. It may not, also, be of value too.

158 XQ. Was there any label on these fragments of this wheel that you saw, Mr. Brady? A. By label—I don't know.

159 XQ. You have no recollection of any label? A. I don't know that there was a label on it.

160 XQ. You don't have any recollection of reading any words on any part of the fragments of the wheel? A. No, I don't recollect any markings on the wheel at all that I saw.

161 XQ. That is the only one I am asking you about, the fragments [75] of the wheel that you saw, Mr. Brady. There were no markings of any kind, no words written out that you could read on the fragments of the wheel that were presented to you by Mr. Durkin. A. If I remember correctly, I didn't see any markings on the piece of wheel given to me.

162 XQ. By markings we mean either figures or words, letters. You recall neither figures— A. I can't relate the wheel to any markings.

163 XQ. Of any kind. A. Yes.

164 XQ. Whether they are words, letters, or figures. A. I am not able to relate it to any memoranda at all.

165 XQ. Then you certainly have no recollection of seeing anything on the fragments of the wheel that was presented to you that would indicate by whom that particular wheel had been made. A. No, I didn't try to find out by whom it was made.

166 XQ. You didn't try to find that out? A. No.

The COURT. We will take our usual recess at this point. Mr. Witness, you are under cross-examination. You will not discuss this case with anyone during the recess.

(Recess)

[76] Mr. REYNOLDS. I have no further questions of this witness.

Redirect examination by Mr. Durkin.

167 Q. I just have one or two, Mr. Brady, if I may. Did I fully understand you in cross-examination, Mr. Brady, to say that it was impossible for you to have performed a spin test with whatever it was that was submitted to you? A. I could not.

168 Q. Is it also true that you could not perform a ring test? A. I could not.

169 Q. Is it also true that it was impossible for you to perform a sonic test? A. That is right.

170 Q. Is it also true, sir, that even if you anticipated or wanted to make any type of chemical test or analysis of that wheel, without that formula that you testified to before you couldn't tell whether or not the specimen that was under consideration was manufactured by any company, could you?

Mr. REYNOLDS. I object. It is a leading question.

The COURT. I think that is so, Mr. Durkin.

Mr. DURKIN. I will reframe it, sir.

171 Q. Can you perform with results a chemical analysis of any [77] specimen and say it is a specimen of any manufacturer without first knowing the manufacturer's formula?

Mr. REYNOLDS. I object again. This is an expert witness. He ought to be able to handle himself.

The COURT. In the interest of economy of time, the witness has already testified substantially to that effect. I will allow it.

A. I could not.

Mr. DURKIN. Thank you, sir; that is all I have.

Mr. REYNOLDS. I have no further questions, your Honor.

The COURT. That is all, Mr. Brady.

The WITNESS. Thank you.

ROBERT MORTON, *Sworn.*

[284] *Cross-examination by Mr. Reynolds.*

127 XQ. Mr. Morton, you are presently employed by the Hoover Company? A. No, sir; I am presently employed by Kingston Conley, Incorporated.

128 XQ. You were employed by the Hoover Company in 1952? A. That is correct.

129 XQ. On the question of interest the Hoover Company is being sued by Mr. Mason for this same injury, isn't it?

Mr. DURKIN. Objected to as being completely immaterial, totally incompetent to be answered by this witness.

Mr. REYNOLDS. There is a great deal of interest of an employee of a defendant sued by the same plaintiff in another jurisdiction.

The COURT. I think you would have to go a little farther than that, Mr. Reynolds. I will sustain the objection on the showing at the moment as to this man's knowledge.

130 XQ. Mr. Morton, do you know that Mr. Whit Mason is suing the Hoover Company in the United States District Court for the District of New Jersey?

Mr. DURKIN. Excuse me. I am going to object to any such testimony being read in the presence of this [285] jury under the present Court's ruling.

The COURT. I think, Mr. Durkin, it would seem to me, No. 1, depending on what the extent of this witness' knowledge is—I don't want to make any unnecessary pronouncements. You will understand why.

Mr. DURKIN. Yes, sir.

The COURT. You understand the subject of that qualification.

Mr. DURKIN. Yes, sir; and my objection is based at this juncture on the testimony as it has been adduced.

The COURT. I will allow that question and see where that brings us. Objection is noted and overruled.

Do you understand the question, Mr. Witness? Will you please read the question, Mrs. Archambault?

(Question No. 130 read by reporter)

A. Officially I do not know or did not know. There has been a lot of conjecture and talk, but I know nothing officially at this point.

131 XQ. Officially or unofficially have you heard the matter of the suit discussed at the plant, at the Hoover Company plant? A. I have heard some talk about it, yes.

132 XQ. You do know that there is a suit pending by Whit Mason [286] against the Hoover Company?

Mr. DURKIN. My objection is to continue to all of these questions, sir.

The COURT. Objection noted and overruled.

A. I have heard talk of it, yes.

133 XQ. You have heard talk of a suit by Whit Mason against the Hoover Company? A. That is correct.

134 XQ. And you worked for the Hoover Company in 1952, didn't you? A. That is correct.

135 XQ. You have already testified to that. A. That is correct.

136 XQ. In 1952 there was a so-called Kingston Conley Division of the Hoover Company. Wasn't that the setup? A. That is correct.

137 XQ. In other words, the Kingston Conley Division was owned by the Hoover Company in 1952. A. That is correct.

138 XQ. And the Kingston Conley Company, you said, you work for now. A. That is correct.

139 XQ. It is a separate corporation? A. Yes, sir; there have been two sales since the time that you are speaking of.

[287] 140 XQ. Is it still owned by the Hoover Company? A. No connection whatsoever.

141 XQ. How do you know that? A. I know the present owners.

142 XQ. You know the present owners? A. That is correct.

143 XQ. When did that separation take place, in what year?

Mr. DURKIN. Which one is this now? I understand there are two.

A. There was a—

The COURT. Are you referring to the Kingston Conley?

Mr. REYNOLDS. Yes, your Honor.

A. (Continued) The present owners purchased the plant—I don't know the exact date but I would say somewhere in the neighborhood of February of this year.

144 XQ. 1958? A. That is correct.

145 XQ. How long was the Kingston Conley Division a part of the Hoover Company? A. Approximately from 1946 until 1955.

146 XQ. Until 1955. Now one other thing: You have talked with Mr. Durkin before coming to court here today about the extent of your knowledge of this matter, haven't you? A. Yes, sir.

[288] 147 XQ. How many times have you talked with him approximately? A. I believe twice. Not counting phones or anything else, twice.

148 XQ. You talked with him about that even though you knew that Whit Mason was also suing your former employer, the Hoover Company? A. That is correct.

149 XQ. How far is New Jersey, that part of Newark where— Do you come from Newark? A. No, I come from Plainfield.

150 XQ. How far is Plainfield from the City of Providence? A. I can tell you. I just drove up. It is 219 miles.

151 XQ. And you are out of reach of a subpoena of this court and you had to come here voluntarily. You couldn't be compelled to come. You know that, don't you? A. That never was mentioned or anything else.

152 XQ. You didn't know whether you could be compelled or not? A. No.

153 XQ. You didn't inquire as to whether you would have to come by subpoena? A. No, I did not.

154 XQ. You didn't want to testify, in view of the fact that this same Whit Mason was suing a company you were working for in 1952, that you wouldn't come unless you were subpoenaed. You didn't say that. [289] A. No.

155 XQ. You volunteered to come and help the plaintiff, Whit Mason, out in the case of American Emery Wheel, didn't you? A. I volunteered information that I knew. Mr. Durkin asked me.

156 XQ. Then you volunteered to come today, didn't you? A. That is correct.

157 XQ. Who is paying your expenses? A. I would imagine my company.

158 XQ. You would imagine your company. Don't you know? A. They are the ones I work for. I am not there today.

159 XQ. Did you take it up with your superiors as to whether you could leave the premises to come here and cooperate with Whit Mason in the trial of this case?

Mr. DURKIN. I will have to object to that phase of it. He is here at the request of the plaintiff's attorney.

The COURT. I think the question is somewhat objectionable.

Mr. REYNOLDS. I will amend the question

160 XQ. Did you take up the matter with your immediate superiors at the company you are presently working for, whether you could come here to Providence today to testify in this case? A. I did.

[290] 161 XQ. And have you been— Have your expenses been offered to you by any representative of the plaintiff to take care of your travel and expenses while you are here? A. No.

162 XQ. They haven't. And you say there is no connection between the company you presently work for and the old Hoover Company? A. None whatsoever.

163 XQ. Mr. Morton, in 1952 when you worked for the Hoover Company, there was no record kept as to what company's grinding wheels went on these bench grinders, whether they were Universal or American. That is right, isn't it? A. That is correct.

164 XQ. No doubt about that. A. That is right.

165 XQ. No records were kept. A. That is correct.

166 XQ. I presume that this Kingston Conley Company is still in business. That has something to do with grinding as of the present day. A. Oh, yes.

167 XQ. Let me ask you this: Is the Kingston Conley Company that you are presently working for today a competitor of the Hoover Company? Do you still make the same kind of things? [291] A. No, we are not a competitor of the Hoover Company.

168 XQ. Who is making these bench grinders today, your Kingston Conley Company or the Hoover Company? A. We are; Kingston Conley.

169 XQ. Hoover Company gave them up? A. That is correct.

170 XQ. They don't compete with you on these bench grinders. Is that right? A. That is correct.

171 XQ. Does that affect your interest in your testimony today, the fact that the company you now work for is the only one of the two previous outfits that are making these bench grinders? Does that influence your testimony in one way or another? A. No, it does not.

172 XQ. Did the company that you work for now, Kingston Conley Company, when it took over the manufacture of these grinders, agree to your knowledge to assume any outstanding liability that the Hoover Company might have incurred for the previous manufacture of these bench grinders?

Mr. DURKIN. Objected to, sir.

Mr. REYNOLDS. If he knows.

Mr. DURKIN. Objected to even if he does know.

[292] Mr. REYNOLDS. If he knows, he should be compelled to answer.

The COURT. I will allow the question. If he knows, he may answer.

The WITNESS. Might I have the question?

(Question No. 172 read by reporter)

A. To my knowledge I don't know. I couldn't answer that. I really don't know.

173 XQ. You couldn't say Yes and you couldn't say No. A. I couldn't say either way; yes.

The COURT. We seem to have reached our customary luncheon hour here, Mr. Reynolds. We will stop here until two o'clock.

* * * * * * * * *

174 XQ. Mr. Morton, I am showing you a wheel which has been marked as Exhibit No. 2 for identification. In the first place, that wheel is not the type of wheel that would be on this bench grinding machine that is in front of the jury, is it? A. It is not the same size wheel; no, sir.

[293] 175 XQ. And it is not the size wheel you would put on that bench grinder when you send it out either, is it? A. That is correct.

176 XQ. What kind of a grinder would this fit? A. ¼ horse.

177 XQ. That is a smaller machine than in front of you. A. That is correct. That is ½ horse.

178 XQ. The machine that is in front of the jury is a ½ horse. A. ½-horse grinder.

179 XQ. This wheel, Exhibit No. 2 for identification, would never be placed on this machine that is marked Exhibit No. 3 for identification, would it? A. That is correct.

180 XQ. What is the correct name of this Universal: Universal what? A. "Universal Wheel and Abrasive Corporation" is what it says.

181 XQ. To your knowledge they haven't always used this so-called red background with white printing, have they? A. That is correct.

182 XQ. They have used others with a white background. A. That is right.

183 XQ. Mr. Morton, do you know whether the Universal Wheel and Abrasive Corporation in Chicago, Illinois, is still in business? A. I don't believe they are.

[294] 184 XQ. You don't believe they are. When did they go out of business? A. I don't know the date.

185 XQ. Have you the approximate time? Was it a year ago, two years ago, three years ago, four years ago? A. To my recollection, I have no date at all in mind; but just as a recollection, I would say anywhere between one year and two years ago. I really don't recall exactly.

186 XQ. This being 1956, probably Universal went out of business either in 1954 or 1955, to the best of your recollection. A. That is correct. I can only go on purchases we have made. I know of no official date.

187 XQ. I will show you a blotter and ask you to look

at it and tell me what that is. A. That is a blotter from Norton—no, not Norton; Universal Wheel and Abrasive Corporation, Chicago, Illinois.

188 XQ. Is that the same company you just told me whose name was on this Exhibit No. 2 for identification? A. That is correct.

189 XQ. What kind of a blotter is that? How would you describe that blotter, blue and white? A. Blue blotter with white lettering.

190 XQ. And that is Universal Wheel and Abrasive Corporation of [295] Chicago, Illinois, isn't it? A. That is correct.

191 XQ. Ever see any botters on any of the wheels while you were working for the Hoover Company that looked like this? A. No, sir; none at all.

192 XQ. Did you ever see any before that looked like this? A. I have never seen that label or anything like it.

193 XQ. Never saw this label before? A. No, sir.

194 XQ. That is what it says on there, isn't it? A. That is correct.

195 XQ. And it has recommended speed, r.p.m.'s. A. Yes, it has on that one, yes.

196 XQ. And you say to your knowledge or to the best of your knowledge they have been out of business since either '54 or '55. A. To the best of my knowledge. I have no date, sir

197 XQ. That is blue and white, isn't it? A. That is correct.

Mr. REYNOLDS. I would like to have this marked for identification, your Honor.

The COURT. It may be marked Defendant's A for identification.

(The exhibit is received and marked for identification)

[296] 198 XQ. Mr. Morton, in your experience in connection with the manufacture of grinding wheels do you have any knowledge as to about how many companies there are who make grinding wheels of a 7-inch diameter similar to the one that is on that grinding machine that is in front of the jury box? A. I have no idea.

199 XQ. You know there are more than one or two in the country, don't you? A. Absolutely.

200 XQ. Would you have any recollection as to whether there might be 25, 50 or 75? A. I would have no idea as to how many there were. I have never investigated for any reason.

201 XQ. Do you know that there are other grinding wheel companies that have blue and white labels other than this one you have just seen? A. I think I have seen some others, yes.

202 XQ. Some other companies with blue and white labels? A. That is correct.

203 XQ. When I say other companies, I mean companies that are not either the Universal Wheel and Abrasive or The American Emery Wheel; I mean in addition to the American and Universal you have seen blotters on grinding wheels from [297] other companies that were blue and white, haven't you? A. That is right.

204 XQ. Now, Mr. Morton, this morning you made some reference to the side of the rest on the machine that is in front of the jury, did you not? A. That is correct.

205 XQ. And you talked about that would be used if you were grinding on the side of a wheel, did you not? A. If you had any reason to grind on the side: that is correct.

206 XQ. Does your company subscribe to the general safety principles that are published by the Grinding Wheel Institute with regard to the care that the operator should use in using your machines? A. Yes, I would say so.

207 XQ. Perhaps I misunderstood you; that is why I

am going to ask you again. Did you say something this morning about putting into the box in which this table grinder is placed some instructions regarding the use of this machine when it is sent out? A. They are instructions only on voltage, hookup, and the properties we are interested in, not particularly the use of the unit itself; lubrication, and so forth.

208 XQ. I show you what appears to be a safety guide for grinding [298] wheel users as published by the Grinding Wheel Institute. Would your concern that manufactures this grinding machine and puts it in an original carton, seals it up,—would you place one of those in there for the assistance of the operator of that grinding machine as to what he should be doing?

Mr. DURRIN. Objected to. I think it is improper. The question at issue is whether or not it was done, not whether or not it should be done.

Mr. REYNOLDS. I will amend the question. I thought I asked whether he did.

209 XQ. When these machines were shipped in 1952, you testified this morning, I believe, that your company, the Hoover Company, placed the machine in a box of some kind. You said it might be wood or it might be cardboard with a wooden base, with other reinforcements here and there. Is that right? A. That is correct.

210 XQ. This carton or box, whatever it was that you encased this machine in, would be a thing in which this machine could be transported from one place to another. That is the purpose of putting it in a box. A. Absolutely.

211 XQ. When you sent these machines out in 1952, did you place [299] one of those suggestions or a similar list of suggestions— A. I don't believe we did. I don't believe we do now.

212 XQ. You don't believe you did? A. No.

213 XQ. Your company, does it specialize in the manu-

facture of grinding machines only or does it make other kinds of mechanical contrivances? A. It is just part of our units, the grinders.

214 XQ. Is it a large part or medium part or a small part? A. I would say it was a small part.

215 XQ. Small part. Getting back to this question of the Hoover Company in 1952, what about the Hoover Company? Were they principally a grinding machine manufacturer? A. No, the same as now.

216 XQ. What else do they make besides grinding machines? A. Fractional horsepower motors.

217 XQ. They make motors? A. That is correct.

218 XQ. When this machine, you say, was made by the Hoover Company, is it a fair statement to say that the Hoover Company probably had some other concern mold these guards and rests and the base; and that all that was manufactured by Hoover was just the motor? Is that a fair statement? A. No.

[360] 219 XQ. You have a foundry there? A. As such, no. The castings have to be made at an outside foundry's source; that is correct.

220 XQ. These castings, that is what you call the guards and the rests? A. That is right.

221 XQ. They were not manufactured by Hoover? A. That is correct.

222 XQ. You bought them from some other company? A. That is correct.

223 XQ. What company did you buy those from? A. We have several foundries. We have a foundry in Paterson, New Jersey, which is Latham Foundry. We have one in Pottstown, Pennsylvania. We have another one in Oswego, New York. It could be any one of those.

224 XQ. They are independently owned? A. That is correct.

225 XQ. And you purchased these castings, represented as guards here and the rests, from other foundries? A. That is correct.

226 XQ. What about the base on which this motor is? You probably have that casting made by some other foundry too, don't you? A. That is correct.

[301] 227 XQ. All that you people make is the motor? A. No, we have to do a job on the parts. We have to do operations; drilling, boring, machining, and so forth, of all the castings. We buy only raw castings.

228 XQ. You buy raw castings and you polish them up and put the holes in them where they should be and places for the bolts and nuts. A. And machining operations that are necessary internally also on the castings.

229 XQ. But fundamentally the castings are made by outside sources? A. That is correct.

230 XQ. Then you assemble the job, so to speak? A. That is right.

231 XQ. Do you actually make the motors or do you get them, too, from some other supplier? A. No, we wind the stator.

232 XQ. Your experience, however, has been chiefly connected with grinding wheels and machines, hasn't it, your particular job? A. My particular job at the time we are speaking of was in charge of all the quality of our products, incoming and outgoing.

233 XQ. Well, now, in 1952 you were the chief inspector. A. That is correct.

[302] 234 XQ. Did you inspect other component parts for other machines that you people made? A. Everything; yes, sir.

235 XQ. What other appliances or machines or articles did your company manufacture at that time in '52? A. Well, as I said, a variety of fractional horsepower motors, from ¼-horsepower motors even up to integrals which run

up to 3-, 4-, 5-horsepower for pumps and other applications.

236 XQ. Floor pumps? A. For pumps, hoists, any applications.

237 XQ. You mean the motor. A. We make the motor.

238 XQ. Did you assemble any other product other than grinding machines? A. We assembled the motors.

239 XQ. After you got the motors did you put your motors on any other product other than grinding machines at your plant and sell them? A. No, not as such, no.

240 XQ. Was the grinding wheel the only product that your company made?

Mr. DURKIN. Objected to, sir. There has been no testimony that this company made any grinding wheels.

Mr. REYNOLDS. My choice of words is unfortunate. [303] I will withdraw the question.

241 XQ. This grinding machine, was that the only full-fledged product that your company made that was sent out as one piece to be used? A. Basically; yes. There was one other item that the Hoover Company put on the market back, I believe even before 1952, which was a saw and grinder attachment—a motor, as such, with a saw and grinder and other attachments. Basically, that is the unit as we put it out.

242 XQ. Basically, that is the unit? A. That is the unit.

243 XQ. Mr. Morton, you know from your experience connected with grinding machines that there is a special type or kind of a grinding wheel that is made where it is intended that grinding shall be on the side of the wheel, isn't there? A. Absolutely.

244 XQ. Absolutely. And this wheel that is on the machine in front of you now is not the type of wheel that is specially made for side wheel grinding, is it?

Mr. DURKIN. Objected to as being immaterial as to

what this particular wheel is made for. If Mr. Reynolds wants to submit a wheel of his company and ask that question, I think it would be proper.

[304] The COURT. What do you say to that, Mr. Reynolds?

Mr. REYNOLDS. I don't think it makes any difference what company it is. It is this type of wheel that was involved, that Whit Mason says he was using. It is that type of wheel. That is what my question is directed to. That type of wheel is not the type of wheel that you would use if you were going to do side grinding. That is the question. It doesn't make any difference whether it is ours, Norton's, Universal's, half a 'dozen others'.

The COURT. If the witness knows, he may answer.

A. Basically, that is correct. You would not use this for 100 per cent side grinding.

245 XQ. You would not use that type of wheel for 100 per cent side grinding. The type of wheel you would use for side grinding would be much wider on the peripheral surface, wouldn't it? A. That is correct.

246 XQ. It would probably be anywhere from two to three times as wide as this present one. Is that right? A. That is right.

247 XQ. And it wouldn't be solid. You could put your finger in from the outside toward the face of the wheel, couldn't you? [305] A. That is correct.

248 XQ. Mr. Morton, will you look at that wheel that I have handed you and tell me whether or not that is the type of wheel that is used for side grinding? A. Yes, I believe you would use this to some extent in toolroom applications, and so forth.

249 XQ. Would it be used for side grinding? A. Not being an expert on wheels, I wouldn't want at this point to say whether it could or could not. I really don't know.

250 XQ. Have you ever seen a wheel of that same general shape before today? A. Yes.

251 XQ. What was the wheel that you saw of that same general shape before today used for?

Mr. DURKIN. I object to this line of questioning. If this witness does answer what it was being used for, then, of course, we have to know what the use was at that time, whether it be proper or not.

The COURT. Is that quite accurate? The witness indicated in direct examination, as I recall his testimony, that there was a portion of this rest which could be employed by the operator for side grinding of an object. Now I take it Mr. Reynolds' purpose is to show [306] that the type of wheel incorporated in the grinder is not used for side grinding; that there is a different type of wheel for such a purpose.

Mr. DURKIN. As I understand Mr. Reynolds' question, he is asking this witness what this witness observed when this witness saw this particular type of wheel in operation. That presupposes, sir, if I may, that the use this witness observed was a proper use, and we don't know whether or not it was.

The COURT. I think there is some merit in that, Mr. Reynolds. However, I think you can inquire of the witness if he knows whether or not the type of wheel which you are showing him is the type of wheel customarily employed for side grinding.

Mr. DURKIN. I have no objection to that.

Mr. REYNOLDS. Very well.

252 XQ. I will ask you that question. Is it? A. Yes, sir.

253 XQ. This side rest that you talked about this morning is on there, in case you have a proper wheel for side grinding on there, to rest your tool on, isn't it? That is what the purpose of that extension of the rest around the corner is for. Isn't that right? A. It could be used for that, yes.

[307] Mr. REYNOLDS. I would like to have this marked for identification, your Honor.

The COURT: It may be marked Defendant's B for identification.

(The exhibit is received and marked for identification)

254 XQ. Mr. Morton, this morning you stepped down from the witness chair in front of the jury box and you indicated that if you were grinding a tool on the outside periphery of this wheel that is on this machine, you would hold the tool somewhat in that fashion, resting it on the rest like that. (indicating) Isn't that right? A. Not particularly.

255 XQ. Would you just do it again? Please be careful; this is a pen. Don't stick it—

Mr. DURKIN. Just a second. I have to object to any type of illustration by this witness unless it be specifically understood as to what type of tool he is holding, as to the angle, and so forth, he is holding it. Of course, the manner in which he would do it would depend on the type of tool he would be utilizing at the time.

The COURT. Didn't he give us some demonstration this morning?

Mr. REYNOLDS. He did, at the request of counsel.

[308] The COURT. Didn't he employ your pen or pencil this morning?

Mr. DURKIN. Pointing to the area and the rest. I don't want any misunderstanding as to the angle these witnesses are using. If that would be understood, I would have no objection.

Mr. REYNOLDS. He did more than just point to it; he placed the pen on the rest this morning.

256 XQ. Didn't you? A. Yes.

257 XQ. You placed it on the rest. Take that pen I have

handed you from the courtroom table here and put it on the rest in such fashion as would be used if you were going to use that wheel to sharpen it. A. This, of course, is all understood this all has to be adjusted to the size of the wheel you are using. As such, you would adjust it accordingly. Basically, if you are going to grind, you would lay it across here and use that surface in front.

258 XQ. You wouldn't take and hold it this way to grind it, would you? (indicating) A. No.

259 XQ. Mr. Morton, this machine, as it now appears before the jury, has a piece off it. What is that piece called? [309] A. In our terminology that is the guard cover.

260 XQ. That still leaves the machine with the guard cover off, and the guard cover attaches to the side of the machine. Would you say that is a fair statement? A. That is correct.

261 XQ. That still leaves something on top of the wheel as it revolves, doesn't it? A. That is right.

262 XQ. May that be taken off? May that guard be taken off this machine? A. It is possible.

263 XQ. How would you do it? A. There are Allen screws, two Allen screws on the end, one here and one there. (indicating)

264 XQ. An Allen screw is a screw that the head is sunk in? A. That is right.

265 XQ. You wouldn't use a wrench to take it out? A. You would use an Allen wrench to remove that screw.

266 XQ. And an Allen wrench is a peculiar kind of a wrench, isn't it? A. That is correct. It is a many-sided wrench that fits down in the socket.

267 XQ. Is this hexagon here, six sides? (indicating) A. Yes.

[310] 268 XQ. It is a piece of steel that has got six sides on it? A. That is correct.

269 XQ. That fits in that hole? (indicating) A. That is correct.

270 XQ. And then it comes up straight and then it has at right angles a short piece of steel also. A. They come in various sizes.

271 XQ. Various sizes? A. That is correct. They have "T" handles and they also come as a standard purchased item in the hardware store, as you have described.

272 XQ. You put an Allen wrench in there and you can attach to that a regular monkey wrench type and turn that screw, can't you? A. That is correct.

273 XQ. There are two of them there, aren't there? A. That is correct.

274 XQ. To take that guard off you would what, remove this nut that holds the flange? A. You would have to remove that.

275 XQ. Next thing is you take off the emery wheel. A. That is correct.

276 XQ. After that you remove these two Allen screws and you can take the whole guard right off. [311] A. After removing the inner flange also.

277 XQ. Is that held in there? A. No, it is held by the outside nut.

278 XQ. The inner flange is held by the pressure exerted by this outside nut against the flange of the outside, against the wheel, against the inner flange. A. Against the shoulder.

279 XQ. And against the shoulder. A. That is correct.

280 XQ. So it is possible to take this entire guard completely off the machine, is it not? A. That is correct.

281 XQ. By doing those operations. Take off this nut, pull off the flange, lift off the wheel, slide off the next flange, and then just loosen these two Allen nuts, and the whole guard comes off. Right? A. That is correct.

282 XQ. After that guard is off the machine, you can then take the flange that is on this shaft, put it on, then you can put the wheel on, then you can put this other flange on, then take the nut and tighten it up, and you can run this machine without the guard on it, can't you? A. You can, yes.

283 XQ. In other words, there is no safety contrivance built into [312] this machine that prevents an operator from running this machine when the guard has been removed and when the rest has been removed. A. There is none required on any piece of equipment such as that. That piece of equipment is Underwriter approved, both here and I believe also in Canada. As we send it out, it has those safety features on it.

284 XQ. But as I said, there is nothing built into this to prevent it from being operated when this guard has been taken off. A. Nothing.

285 XQ. When the guard has been taken off, these flanges can be put on the wheel, the other flange, the nut tightened up, turn on the juice, and that grinding wheel will revolve at 3600 revolutions without any guard on it, won't it? A. That is correct.

286 XQ. Do you put any literature in the box with this grinding machine cautioning persons not to remove the guards when they are doing any work? A. I don't believe we do, no.

287 XQ. You didn't then anyway in '52, to the best of your recollection. A. I don't believe we did, no.

[313] 288 XQ. You probably don't now. A. I don't think so.

289 XQ. Mr. Morton, I think you said that you would subscribe to this safety code of the Grinding Wheel Institute, having to do with the use of grinding machines. Perhaps you would like to have a minute. I would like to have you read what is in there, if you care to.

Mr. DURKIN. I will have to object to this without first knowing what the purpose of it is.

The COURT. What is the materiality of some code such as this, Mr. Reynolds?

Mr. REYNOLDS. Well, it sets up—it is evidence of a standard of care on the part of the persons operating, universal usage or generally accepted usage.

Mr. DURKIN. How is that to be proven by this witness?

Mr. REYNOLDS. He is the man who makes them. He ought to be able to tell how they ought to be used.

Mr. DURKIN. Anything this man might do or think certainly is not imputable to the plaintiff in this action.

Mr. REYNOLDS. I don't care whether it is imputable. We are just asking the man who makes the machine what are the capabilities of the machine, what it can do, what it can't do, what you should do and shouldn't do [314] with it.

Mr. DURKIN. That is entirely distinguished from what he is being asked now.

The COURT. It strikes me, Mr. Reynolds, that is somewhat removed from being shown a document prepared by some third party, and he is, in effect, being asked to pass judgment on that document. You seem to be inquiring whether he agrees with what someone has said in that document.

Mr. REYNOLDS. I will withdraw it temporarily.

The COURT. I think the objection is good.

290 XQ. Mr. Morton, if a bench grinding machine that has on it already emery wheels, as you have indicated that is the way they send them out of Hoover Company, all finished product, ready to plug them in and go to work,—A. That is correct.

291 XQ. If that machine has been dropped, should you use the wheel?

Mr. DURKIN. We are still having to call for conclusions

from this witness. I have attempted to be tolerant in these suppositions, and so forth. Now we are going a little too far. They would certainly have to show the resultant condition upon the wheel if, in fact, the machine was ever dropped.

The COURT. I will sustain the objection. There [315] are drops and drops, Mr. Reynolds.

292 XQ. Suppose the wheel has been dropped, should that be used?

Mr. DURKIN. I object to that too, sir, because the thing that is material is the end result of the wheel.

The COURT. I think so. I will sustain the objection.

293 XQ. Now should an emery wheel be forced onto a grinding machine such as in front of the jury? A. Absolutely not.

294 XQ. Should not be forced; absolutely not. Why not? A. It would have a tendency to damage and crack the wheel.

295 XQ. If it is forced on the spindle, it would have a tendency to damage and crack the wheel. Is that right? A. That is correct.

296 XQ. Should the machine be operated at a speed in excess of the recommended r.p.m.'s on the emery wheel? A. Absolutely not.

297 XQ. Now you have testified that on this machine that is in front of the jury here, that says, "Millers Falls Tools," on it, that the recommended r.p.m.— What did you say it was? A. 3450.

298 XQ. Aren't there two sets of numbers there? A. There are; yes, sir.

[316] 299 XQ. What is it, the same number twice? A. No. If you run the unit on 50 cycles, you get one r.p.m. on it. If you run it on 60 cycles, you get another r.p.m. It depends on the current—locale in which you run.

300 XQ. What are the two r.p.m.'s on there? A. 2850 and 3450.

301 XQ. If there were 50 cycles in the power that was being supplied, it would run at 2850? A. That is correct.

302 XQ. If there were 60 cycles in the power that was being supplied, it would run at 3450? A. That is correct.

303 XQ. What assurance does the purchaser of that machine have that that motor won't run faster than 3450 at 60 cycles? A. It is impossible for it to run faster.

304 XQ. Why is it impossible? A. I am not an electrical engineer, but, basically, the electrical properties in the winding that is put into that, that particular unit, it cannot run faster than 3450.

305 XQ. You are assuming, of course, that the winding has been properly done. A. We don't have a winding in our entire plant, and have [317] never had, that runs higher than 3450.

306 XQ. Do they ever have to check grinding machines to see whether they are overspeeding? A. We never have.

307 XQ. You never have? A. No, sir.

308 XQ. Never heard of it being done? A. I would say it is done, but there is no problem on our units, on a bench grinder such as that.

309 XQ. Was it done on any of the grinders manufactured by the Hoover Company when you were there in 1952? Did they ever have to check them for overspeeding? A. No, sir.

310 XQ. Other companies that make grinders, they have to check them for overspeeding, but not your company. A. No. I was just saying it might be done on some grinders but I have never come across a case that we had a problem of a grinder overspeeding.

311 XQ. What do you mean when you say it might happen on some grinders? A. It could happen. Again, as I say, I am not an electrical engineer, but it could happen if certain things were to take place in the electrical end of the motor. It could also happen if your AC current or DC

current was [318] alternated or changed. Your unit would change speed.

312 XQ. What would happen in the motor itself, that you refer to, that would cause it to overspeed beyond the stated limits on the tags? What would be some of the causes in the unit itself? A. To make it overspeed?

313 XQ. Yes. A. The wind you put in there constitutes the r.p.m.; the way you wind it, the number of poles. A 3450 motor, as such, in the industry is called a 2-pole motor. When you begin to change your poles on your winding—getting into electrical properties again— When you begin to change your poles, you change the speed of your motor. And, as such, we have never wound anything but 2-, 4-, and 6-pole motors. Basically, that is it.

314 XQ. I thought you said something in the motor itself could cause it to overspeed. What would that be; the wrong poles, too many poles, or what? A. An incorrect winding.

315 XQ. Do they have some machines whereby they test the speed with which this motor will turn a wheel in your place, in Hoover Company? A. Yes.

316 XQ. And I suppose these motors were all tested before they [319] were sent out. A. Every unit is final-tested; run electrically and also checked mechanically.

317 XQ. That was one of your jobs, wasn't it? A. I was in charge of it but it wasn't my job.

318 XQ. I don't mean personally. You had the responsibility for seeing that these were all checked finally. A. That is correct.

319 XQ. Does the workman have to look at some material or hear something in order to determine whether that motor is running 3450 with 60 cycles or not? A. He takes a tachometer reading.

320 XQ. Is there some human factor involved? A. You read a dial.

321 XQ. Some human being has got to read a dial and make a note, hasn't he? A. That is correct.

322 XQ. Do you keep any records whereby you could go to the number that appears on that machine and tell who was the man that investigated or checked on the motor as distinguished from the other parts? A. No, we don't.

323 XQ. On the sides of the guard here there is somebody's name who tested in there. What did he test, to see if the guard was all right? [320] A. He tested the motor mechanically.

324 XQ. What do you mean by that, whether it would start when you would turn it on or stop when you would shut it off? A. He checked to see all parts were tight; that the correct parts were on it; going to a particular customer, that it had the necessary things that the customer wanted.

325 XQ. When you get an order, Mr. Morton, for a bench grinder, such as this, does the customer—the distributor, in this case, the Millers Falls people—tell you the purpose for which that grinder is going to be used? A. Not specifically, to my knowledge. It is strictly, as I say, a line of bench grinders that we handle and, as such, they buy them; and they are not the only ones that buy them. We build the same one for quite a few different customers.

326 XQ. Sears Roebuck; you probably make one for them? A. Not at all. Stanley Products, to be more specific.

327 XQ. Let me ask you this: Do you know why they build this particular bench grinder with a 7-inch wheel on it, why it isn't a larger one or smaller one? Do you know why that is? A. There are standards that you put on various size units. If you have a 4-inch wheel, that would go on a ¼-horsepower grinder unit. As you progress through a ¾-horsepower, [321] you would take a 6-inch wheel with a certain size bore. As you would get to a ½-horsepower grinder, you would take a 7-inch wheel. A 1-horsepower grinder would take a 10-inch wheel.

328 XQ. What is the reason for the difference in the sizes of the wheels and the motors for grinding purposes? A. The amount of duty that they have to do.

329 XQ. The amount of what, please? A. Duty.

330 XQ. Duty? A. That is right. There are torques involved in each one of these. A torque is basically the strength that that grinder is capable of exerting.

331 XQ. You hear something about torque when you are buying your automobile. A. It is a driving power.

332 XQ. Does the question of the size and strength of the object that is going to be ground enter into the decision as to whether you should use a 4-inch wheel, a 6-inch wheel, a 7-inch wheel, or a 10-inch wheel? A. Yes, I would say it would have to.

333 XQ. On this particular bench grinder—it is meant to grind small hand tools, isn't it? A. It is a bench grinder and, as such, you can use it for [322] varying size tools.

334 XQ. Principally a small tool. A. Yes.

335 XQ. Just to test your general knowledge as a grinding wheel man, what is the largest grinding wheel that you know of that is made? A. You are getting out of my line now as far as grinding wheels.

336 XQ. How far up do you know they go? A. To my knowledge, I have seen wheels up to about 2½ feet.

337 XQ. About 2½ feet in diameter? A. That is correct.

338 XQ. And a wheel of that size would be capable of doing pretty heavy work—about 2½ feet. A. Absolutely.

339 XQ. And that points up what you said a minute ago, doesn't it, that the size of the wheel has something to do with the duty that is expected or the torque that is going to be applied? A. That is correct.

340 XQ. To what extent was this wheel— To what extent was a 7-inch wheel on a bench grinder applied at the Hoover Company in 1952?

Mr. DURKIN. May I have that?

(Question No. 340 read by reporter)

[323] Mr. REYNOLDS. I withdraw that.

341 XQ. In 1952 when a 7-inch wheel was being put on a bench grinder at the Hoover Company, to what extent would the nut that holds the flange that holds the grinding wheel on the grinder be tightened? Do you understand the question? A. You mean the pressure that would be exerted to put that on?

342 XQ. How much pressure would you put on the nut that is up against that flange, which, in turn, is up against a wheel, 7-inch wheel? A. It doesn't need extreme pressure at all.

343 XQ. Mr. Witness, not only does it not need extreme pressure; but if extreme pressure were exerted on that nut, it would have a tendency to crack the wheel, wouldn't it? A. That is correct.

344 XQ. When the wheel, a 7-inch wheel, is being placed on a grinder, a bench grinder, the reason why excessive pressure is not used to tighten the nut at the flange is because if you put too much pressure on it and if you tighten the nut too tightly against that flange, the tendency is going to be to break the wheel. Is that right? A. Possibly, yes.

345 XQ. That is because the heat builds up too fast in there when that begins to revolve at 3600 revolutions a minute, [324] isn't it, among other things? A. Among other things.

346 XQ. Do you know one or two other things you could throw in for good measure? A. You put undue stresses on the wheel without even revolving as far as that goes.

347 XQ. You could crack it if it didn't turn at all: A. That is right.

348 XQ. These blotters similar to and such as this one that is identified as Defendant's Exhibit A for identifica-

tion,—these blotters that are placed on 7-inch grinding wheels are placed there not only to identify the manufacturer of the grinding wheel; they also serve a useful purpose when you place the flange against them, don't they? A. That is correct.

349 XQ. They aren't just put on there for the advertiser to make sure the people know whose grinding wheel they are buying. Is that right? A. That is right.

350 XQ. Do you call this a blotter in the trade? What do you call a thing of this kind? A. Yes, I always call it a blotter.

351 XQ. What purpose does a blotter serve when it is attached to a grinding wheel and then a flange placed against it, and [325] the flange, in turn, is tightened by use of a nut on the end of a spindle? A. It would act as a cushion.

352 XQ. It acts as a cushion: Have you ever seen a blotter on a machine where there was more than one thickness? A. You mean the blotters of different thicknesses?

353 XQ. There were two blotters or three blotters, one on top of the other. A. I haven't seen any, no.

354 XQ. Mr. Morton, if there were no blotter on a 7-inch grinding wheel and the grinding wheel was placed on the grinding machine, such as the one that is in front of the jury, and then the flange put on and the nut tightened, without a blotter there, there would be grave danger of there being a break in the wheel, wouldn't there? A. I would say so, yes.

355 XQ. Would you say if a person had a grinding wheel where the blotter had been destroyed, but, nevertheless, placed it on a grinding machine, put the flanges on, and tightened the nut,—would you say that that person ran a grave danger of having that wheel break right then and there even without it turning around once?

Mr. DURKIN. Objected to as being totally speculative

on behalf of this witness. It calls for a conclu [326] sion based upon too many facts.

The COURT. I think he has told us what the purpose of the blotter is. I will sustain the objection.

356 XQ. Now a piece of work that is being worked on by a workman, should it be jammed in the space that will be between the wheel and the rest? Should it be jammed in there? A. No.

357 XQ. What would happen if it were jammed in there? A. That is hard to say. One thing that could happen, you would stall the unit.

358 XQ. You could what, please? A. You would stall the unit.

359 XQ. Would anything happen to the emery wheel in your judgment?

Mr. DURKIN. I have to object. I tried not to object but this is beyond—

The COURT. I think it is somewhat speculative. I will sustain the objection.

360 XQ. How would a person attempting to grind an article on a bench grinder determine what material is satisfactory to grind on it or what material is unsatisfactory to grind on it, do you know? A. How would you determine?

361 XQ. Yes. A. If you were using normal material, such as any one of us [327] might use, normal steels, and so forth, around the house or in a normal shop, you wouldn't have any problem with the grinder. If you were using special alloys, you would have to check on a handbook.

362 XQ. Where would a person get a handbook? A. You can get them from various sources.

363 XQ. You don't put any in the boxes that you send out with the machines? A. No, we don't. As I said before, we build this for a customer. If he wants to put that in, he can.

364 XQ. That would mean if the Millers Falls people wanted to put in a book of instructions as to how to use these machines,— A. They would send them to us and we would have to put them in.

365 XQ. —they would send them along. There is no reason that you know of why they couldn't put them in at their own plant when you sent them up, is there? A. They couldn't get in the carton. They would have to rip every one open.

366 XQ. Mr. Morton, I think you said this morning that when you received the grinding wheels from the American Emery Wheel, you received them in barrels. A. That is correct.

[328] 367 XQ. And there was sawdust and other things in there. Right? A. Sawdust.

368 XQ. Your workmen at the Hoover Company in 1952 had the job of opening the barrel, No. 1, didn't they? A. Yes.

369 XQ. Did they use a hammer and chisel to open the barrel? A. Probably a hammer.

370 XQ. How many pounds? A. Medium size hammer.

371 XQ. They used a hammer to open up the barrels. Did they break the side of the barrel in? A. No.

372 XQ. How do they open it? A. The top is removed.

373 XQ. Is the top nailed when it arrives there? A. As all barrels are, yes.

374 XQ. And they have to break the wood, do they? A. That is correct.

375 XQ. The barrel of grinding wheels is up on its end, isn't it? A. That is right.

376 XQ. Not on the round surface; it is up on its end. And the man takes the top of the barrel—he has a hammer —and whacks that wood until he breaks it. A. That is right.

[329] 377 XQ. And when he breaks the wood, the top, he takes out the wheels. A. After digging.

378 XQ. After digging. That is assuming there weren't any wheels near the top. A. I have never seen any at the top.

379 XQ. You have never seen one but it could be there, couldn't it, even though you have never seen one in the handling? A. It could be.

380 XQ. And then the workman takes them out separately by hand, I presume, out of the barrel. A. That is correct.

381 XQ. He puts them in a wheelbarrow, I suppose, to cart them to some bin. A. He puts them directly into the bins.

382 XQ. And the bin is what, 3 or 4 feet off the floor, high, or a foot high? A. They run from 2 inches off the floor and in sections on up to 7 feet high.

383 XQ. And he has to pack them in there? A. That is correct.

384 XQ. Does the fellow ever drop them once in a while? A. He might.

385 XQ. Then they are packed there. Then after you get ready to assemble this machine, I presume the application of this [330] emery wheel is probably one of the last things you do before you put that side guard on, isn't it? A. That is correct.

386 XQ. Then a workman goes to the place where they store these wheels and he lifts them out by hand. A. No, they are issued to him.

387 XQ. Somebody else takes them from where they have been stored and hands them to the workman. A. No, they have them taken down there by cart.

388 XQ. That means some other workman has to go in this storage place, handle the wheel, put it on some sort of a cart; 4-wheel or 2-wheel cart. A. That is correct.

389 XQ. Pack them up, one on top of the other. A. That is correct; in a box.

390 XQ. But they are right on top of one another. A. That is correct.

391 XQ. Sawdust in between them? A. No.

392 XQ. There is nothing in between them. A. That is correct.

393 XQ. Then he wheels them down to the place where the workman is going to put them on this machine. Is that right? A. Right.

[331] 394 XQ. There is quite a little handling of those emery wheels in your own premises, isn't there? A. Two or three times, yes.

395 XQ. When they get to the workman who is putting them on the bench grinder, does he pick them up and just put them on the wheel? A. He looks them over visually and puts them on.

396 XQ. He doesn't tap it with a hammer to get a ring, does he,— A. No.

397 XQ. —to make sure there isn't some crack that has gotten in that wheel while it was being put in your place or cart there, does he? A. No, he visually looks at it.

398 XQ. He doesn't hit it with a little hammer to see if it rings or anything. If he doesn't see any crack he can see with his own eyes or with the aid of reading glasses, that wheel goes on the machine, doesn't it? A. That is correct.

399 XQ. After that wheel gets on the machine, what do you people do with it as far as testing a 7-inch emery wheel: just turn on the motor and let it run around? A. Turn the motor on and take meter readings while it is running.

400 XQ. What does the meter reading show? [332] A. Shows whether electrically the motor is satisfactory.

401 XQ. The meter reading doesn't show anything with regard to the emery wheel? A. No.

402 XQ. So the only inspection that you people make of these emery wheels after you receive them from the supplier, whether it is American or Universal,—at that time in '52—was that when the man is about to put the wheel on the machine, he visually looks at it with his own naked eye or assisted by reading glasses; and if he doesn't see any cracks in it, he just puts it on the machine. A. They are checked at receiving inspection. I said previously they were checked when they come in. When they are removed from the barrel, they are inspected.

403 XQ. And they are inspected before they are stacked away in your storeroom. A. That is correct.

404 XQ. And not inspected again until just before they are being put on the machine. A. That is correct.

405 XQ. And they are handled in the meantime by at least two other workmen. A. That is correct.

[333] 406 XQ. Now the back of this machine— Can you step down, please, Mr. Morton for a half of a minute? (Witness descends from witness chair) The back of this machine, it looks like an exhaust on the back of an automobile. All right; you may take your seat again now, please. Thank you. (Witness resumes witness chair) That is the way that is made by your company. A. That is correct.

407 XQ. What is the purpose of having that—I will call it an exhaust for purposes of identifying it a little more easily— What is the purpose of having that exhaust on the machine? A. That is to take away any material that is removed from the wheel or from the piece you are grinding.

408 XQ. If there is a chip that comes off the grinding wheel as it goes around, it is intended to go out through that and go to the back. Is that right? A. That is right.

409 XQ. That is a safety feature, is it? A. That is correct.

410 XQ. Is that primarily why that exhaust, as I call it, is on there, to carry away from the operator any little

pieces that might come off the machine or the tool—I am [334] sorry—any pieces that might come off the wheel or the tool while it is being used? A, Yes, sir.

Mr. REYNOLDS. Will your Honor excuse me a minute? I have no further questions, your Honor.

Redirect examination by Mr. Durkin.

411 Q. Just maybe two or three. We heard about the pressure that,—or what would be the result of the pressure, if there be excessive pressure, if this nut or bolt, or whatever it is, is tightened excessively. Is that not correct? A. That is right.

412 Q. And actually the word, excessive, is a relative term depending upon a particular use. Is that not correct? A. That is correct.

413 Q. Will you tell the Court and jury, Mr. Morton, please, what type of instrument is used to put that type of bolt on at your plant? A. An air gun.

The COURT. What?

The WITNESS. Air gun.

414 Q. Also, when you were asked about holding tools and small tools to be used on here, actually, Mr. Morton, isn't it a fact that the particular substance involved rather [335] than the size of that substance is the determining factor whether or not it is an applicable attachment to that wheel? A. What anyone wants to grind on there is, as far as we are concerned, their business. We feel anyone that buys a unit that size will know the use to which they want to put the article and they will not try to grind something as big as a house on a small bench grinder.

415 Q. But the physical size— For instance, if I had a 4 by 4 piece of thin tin and put it against that wheel, of course, there would be nothing wroing with that, would there? A. No.

416 Q. If I had a piece of metal the size of my glasses,

8 inches in diameter, in thickness, very heavy in character, and I put that against the wheel, of course, there would be a different effect upon that wheel. Is that not right, sir? A. That is correct.

417 Q. So actually the substance or matter that is being applied to the wheel is the important thing rather than the size. A. Again it refers back to the torque, the pressure you exert.

418 Q. Yes, sir; the torque pressure against that wheel is the [336] important thing. A. That is correct.

419 Q. And it makes no difference at all whether or not I hold an object this way or this way? (indicating) A. It makes some difference as to how you grind on it, depending on whether you jam down between the units we have on it for safety.

420 Q. Yes, sir; but aside from the particular question of jamming, it doesn't make a bit of difference whether or not the angle be up or the angle be this way, does it, sir? (indicating) . A. Angles are not relative at this point.

421 Q. You do not supply any type of Allen wrenches in the container that these machines go out in, do you, sir? A. None.

Mr. DURKIN. I think that is all I have. Thank you, Mr. Morton.

Recross-examination by Mr. Reynolds.

422 XQ. The angle that is used in holding a piece of metal of any kind is important on the question of whether or not the thing gets jammed between the rest and the wheel. That is the important consideration when you are considering the angle of the material. Isn't that right? A. Eliminating all the other things, yes, that is right. I [337] mean how you want—I know how I would grind if I were going to use it. If you jam anything down at the point you just pointed at—

423 XQ. The point I pointed at was between the wheel and the rest. A. If anything gets out of your hand and gets in there, yes, you have got trouble.

424 XQ. Secondly, I want to ask you about the air gun. Is that something that is automatic, that tightens up a nut? A. Yes, it is at a set torque. It has a certain strength that tightens those nuts up automatically.

425 XQ. Does an operator have to put something on this? What do you do; put the nut on the spindle, you tighten it up as far as you can by hand; or is the whole thing done by this air gun? A. You put the nut on just so you start it, and the air gun puts it all the way.

426 XQ. Does a man have to take a—put it up against the— Does he have to hold the trigger to shut it off? A. It automatically slips when it gets to a certain pressure.

427 XQ. That is assuming the gun is in proper shape. What happens if a man holds a finger on the trigger longer than he should? A. It keeps slipping. Can't tighten over a certain poundage.

428 XQ. When this gets out into the field and a man is putting [338] this nut on by the aid of a monkey wrench or a similar tool, then, of course, he has got to use some pretty good judgment about putting this on. A. That is up to him.

429 XQ. This shaft on this bench grinder that is in front of this jury is the same shaft that is on either side of the motor. Is that correct? A. That is correct.

430 XQ. And when one wheel on one side moves, the wheel on the other side moves exactly the same number of revolutions. Is that right? A. Yes, sir.

431 XQ. If there were an emery wheel on the left side of this machine that I am looking at here, if a man was tightening up this nut, could he hold onto the left wheel so that he could exert some pressure in tightening up the nut? A. Yes.

432 XQ. That would be the way to do it, wouldn't it? A. Yes.

433 XQ. Then it depends on how tightly he holds this wheel over here as to how much pressure he wants to exert there. A. That is right.

434 XQ. When I say there, I mean at the site of the nut which [339] holds the flange of the wheel on the opposite side of the machine. Right? A. That is correct.

Mr. REYNOLDS. I think that is all, Mr. Morton.

Mr. DURKIN. That is all I have, sir.

(Conference at the bench between the Court and counsel.)

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CHARLES W. PARSONS, Sworn.

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Cross-examination by Mr. Reynolds.

[343] 32 XQ. Mr. Parsons, were you subpoenaed to come here today? A. I was; only they called me Parson instead of Parsons. They forgot to put the "s" on here. I am not a parson.

33 XQ. Mr. Parsons, when you say that you had on hand a small number of wheels at one time from the Norton Company, made by the Norton Company, the wheels you refer to were [344] similar in type to the one that is exhibited before the jury, that I am pointing to. A. I would say so.

34 XQ. Namely, a 7-inch wheel. A. Yes, we have had some.

35 XQ. With about what, an inch-and-something across the face of it? A. About that.

36 XQ. And 5/8ths— A. 5/8ths hole.

37 XQ. —put on the thing. What would be the point in carrying a few extra Norton wheels of the same type as the

one that is on that machine that is in front of the jury? A. I am not in the sales department but I would assume if a man wore a wheel out, he would want another one, and the easiest place to get it was from us.

38 XQ. Would you also assume if a man had a machine that bore your name plate, such as this one does here, Millers Falls Tools, if he broke a wheel, he would know where to get one too, wouldn't he? A. Mostly he would go to a hardware store. The sale of the individual wheel didn't amount to much. In fact, we gave it up several years ago, just gave it up entirely.

39 XQ. In 1952 and 1953 you hadn't given it up. [345] A. I think we had a few wheels in stock.

40 XQ. You had a few wheels in stock in 1952 and 1953. A. Whether that size or not, I couldn't say. I wouldn't know what size.

41 XQ. There probably were some of that size, were there not? A. I wouldn't dare say; I wouldn't know.

42 XQ. You wouldn't deny it or you wouldn't admit it. A. I wouldn't commit myself either way because I wouldn't know.

43 XQ. Did your company buy a bench grinder from any other company other than the Hoover Company or Kingston Conley Company in 1952 and 1953? A. No, sir; we did not, no.

44 XQ. Do you buy them from any other company now?

Mr. DURKIN. Objected to as being immaterial.

The COURT. It is immaterial what he does now. We are interested in 1952.

45 XQ. Well, now, the grinders that you made in your plant in 1952, did you say, were larger than this bench grinder? A. Nothing like that at all.

46 XQ. Whose wheels did you use on those? A. The only wheel I can recollect was a Manhattan Rubber Company in New York.

47 XQ. That was for the portable one you spoke of. [346] A. The portable one, yes. We never made this type.

48 XQ. Did you make any heavier than that? A. Never made anything of this type at all.

49 XQ. I am not asking you of this type; I say heavier than that. In other words, let me put it to you this way: You made a portable grinder which is smaller than that, you said. Right? A. I didn't say it was smaller. I said it was a different type of grinder.

50 XQ. It may not be smaller but it is a different type. A. Different type of grinder.

51 XQ. Would the portable type that you referred to sometimes use 7-inch wheels like this one? A. No, I don't think so.

52 XQ. You are not sure of it though? A. I am pretty sure not.

53 XQ. What would be the maximum size of the wheels on the grinders you people make? A. I think they are 6 inches. The kind we make are the type used in a garage if you had a wrecked car, work like that, but not this type of a grinder.

54 XQ. There isn't much difference between a 6- and 7-inch wheel, is there? Just to look at it, wouldn't it be kind of hard to tell whether it was 6 or 7 inches? [347] A. I don't think so.

55 XQ. Did you make anything that took wheels larger than 7 inches, grinding wheels? A. No, we didn't.

56 XQ. You didn't? A. No.

57 XQ. These grinders, when they came in, were stored in whatever container they came in? A. That is right.

58 XQ. They were stored on your premises? A. That is right.

59 XQ. Did they come in by motor carrier, freight? A. Usually.

60 XQ. Would it be some of your men; that is, employees of Millers Falls, who would unload the— A. That is right.

61 XQ. —motor carrier? A. Yes, sir.

62 XQ. How much would you say one of these bench grinders weighs approximately? A. Oh, I haven't any idea. I would say about 30 pounds roughly; 25, 30 pounds.

63 XQ. Would these be taken by some of your employees and put on a hand truck of some kind and wheeled to some part [348] of your factory or warehouse, there to be stored awaiting a purchaser? A. They would take them off the truck they come in, and put them on a hand truck, and take them somewhere where they would be stored, yes.

64 XQ. Would there be one or two men handling each one of these? A. That I wouldn't know.

65 XQ. Then they would be stored in a warehouse on some part of your premises? A. That is right.

66 XQ. Indoors and under cover? A. Under cover; that is right.

67 XQ. When an order comes in to sell one of these, some workman goes down and puts a stenciled name on the carton giving the name of the consignee or the purchaser? A. Correct.

68 XQ. And would he have to move that carton or case around in order to put the stencil mark on it? A. He would move it onto a work bench. He might.

69 XQ. Would these bench grinders be piled one on top of another in their respective cartons or cases while they were awaiting an order? A. They would, about five or six high.

70 XQ. Any one of these ever fall off, to your knowledge, once [349] in a while? A. Not to my knowledge.

71 XQ. Not to your knowledge? A. No.

72 XQ. Then the workman, after he took it from this pile of five or six cases, possibly he would bring it to a bench? A. That is right.

73 XQ. Then after that would he put it on a hand truck and bring it out to a motor carrier, freight? A. As a rule.

74 XQ. As a rule. During all of those operations that carton that you had there from the Hoover Company with this grinding machine in it was never opened. A. That is right.

75 XQ. By any of your employees at any time. A. That is right.

76 XQ. To see whether there had been any damage in transit from the Hoover Company to your place at Millers Falls. A. Correct; never was opened.

77 XQ. Never was opened. A. No.

78 XQ. And then it still remains unopened on your premises and when you get ready to ship it to a customer, it is stenciled and wheeled out to some other mode of con [350] veyance like a motor carrier or freight car, and it is loaded. A. That is right.

79 XQ. And you don't open it at that time. A. Never open it at all.

80 XQ. So you would never know what particular grinding wheels were on any particular bench grinder that you sold, would you? A. No, I wouldn't.

81 XQ. You wouldn't know who manufactured them? A. Not a bit.

Mr. REYNOLDS. I think that is all, your Honor.

Mr. DURKIN. Thank you, Mr. Parsons.

The WITNESS. You are welcome, sir. Am I excused now?

Mr. DURKIN. I have no further— Mr. Reynolds, do you want Mr. Parsons any longer?

The WITNESS. Am I excused, your Honor?

The COURT. You certainly are, sir. The Court will take a short recess at this point.

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